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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 164.

THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY, TRUSTEE, AND FRANCIS I. GOWEN, ACTING RECEIVER OF CHOCTAW COAL AND RAILWAY COMPANY, APPELLANTS,

vs.

W. H. COOPER AND JAMES COOPER, COMPOSING THE FIRM OF W. H. COOPER & SON.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

FILED SEPTEMBER 24, 1892.

(15,147.)

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a Pleas and proceedings in the United States circuit court of appeals for the eighth circuit, at the May session, 1892, of the October term, 1891, of said court, begun and held at the United States court-house, in the city of St. Louis, Missouri, on the first Monday in May, to wit, the second day of May, A. D. 1892, before the Honorable Henry C. Caldwell and Honorable Walter H. Sanborn, circuit judges, and Honorable Oliver P. Shiras, district judge.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

Attest: JOHN D. JORDAN, *Clerk.*

Be it remembered that heretofore, to wit, on the thirtieth day of March, A. D. 1892, a transcript of record, in pursuance of an appeal allowed by the United States court in the Indian Territory, was filed in the office of the clerk of the United States circuit court of appeals for the eighth circuit; which said transcript of record is in the words and figures following, to wit:

1 *Transcript of Record.*

In the United States Court in the Indian Territory, Second Judicial Division.

THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY OF Philadelphia, Trustee, and Francis I. Gowen, Acting Receiver of the Choctaw Coal and Railway Company, Appellants,
vs.
W. H. COOPER & SON, Appellees.

In the Receivership Cause of LANGHORNE WISTER and THE Girard Life Insurance, Annuity and Trust Company of Philadelphia, Trustee, Plaintiffs,
vs.
CHOCTAW COAL & RAILWAY COMPANY, Defendant.

Be it remembered that heretofore, to wit, on the 8th day of October, 1891, at chambers, the appellants herein, W. H. Cooper & Son, filed their petition or complaint in equity as intervenors in the receivership cause of Langhorne Wister *et al. vs.* The Choctaw Coal & Railway Company, in the United States court in the Indian Territory, said complaint being in words and figures following, to wit:

In the United States Court for the Indian Territory, Second Judicial Division. In Equity.

LANGHORNE WISTER
vs.
CHOCTAW COAL & RAILWAY COMPANY.

To the honorable court:

Your orators, William H. Cooper and James Cooper, partners, composing the firm of W. H. Cooper & Son, complaining of E. D.

Chadick and Francis I. Gowen, receivers of the Choctaw Coal & Railway Company, by leave of the court first had, come, make themselves parties to the above-entitled cause, and file this their motion and humbly suing say:

That heretofore, to wit, on the 2nd day of September, 1891, and on the various times theretofore mentioned in the account hereto attached, marked "Exhibit A" and made a part hereof, your orators at the special instance and request of said receivers, furnished all materials and performed the labor in said account specified, for which the said receivers promised and became bound to pay the amounts charged therefor in said "Exhibit A," and that said amounts
2 so charged therefor are the reasonable value of the materials furnished and the labor performed as aforesaid; that upon the dates therein specified your orators received from said receivers no recognition of any indebtedness to them by said receivers to vouchers mentioned in said "Exhibit A," whereby the said receivers promised and became bound to pay unto your orators the sum of $31,913.09 (thirty-one thousand nine hundred and thirteen dollars and nine cents), yet, though often requested, the said receivers have never paid the same nor any part thereof, save and except the credits shown upon said "Exhibit A," which amount to the sum of twelve thousand nine hundred and eighty-one dollars and thirty-seven cents ($12,981.37). That the balance due your orators from said receivers is the sum of eighteen thousand nine hundred and thirty-one dollars and seventy-two cents ($18,931.72). That the voucher named in said account as "April voucher" and marked "Exhibit B," is for a balance due for labor performed and material furnished in the erection of the following buildings along the line of sail railway, to wit:

Alderson depot, at Alderson, Choctaw nation, Indian Territory, on sixth mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Wilburton depot, at Wilburton, Choctaw nation, Indian Territory, on thirty-first mile east of South McAlester, on Choctaw Coal & Railway Company's right of way.

Fanshawe depot, at Fanshawe, Choctaw nation, Indian Territory, on fifty-third mile east of South McAlester, on Choctaw Coal & Railway Company's right of way.

Red Oak depot, at Red Oak, Choctaw nation, Indian Territory, on forty-fifth mile east of South McAlester, on Choctaw Coal & Railway Company's right of way.

Section-house # 1; first mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 2; seventh mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 3; between Alderson and Alderson, near Brushy creek, Choctaw Coal & Railway Company's right of way.

Section-house # 4; fourteenth mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 5; eighteenth mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 6; twenty-second mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

3 Section-house # 7; twenty-seventh mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 8; thirty-second mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 9; thirty-sixth mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 10; fortieth mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 11; forty-fifth mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 12; fifty-first mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 13; fifty-fifth mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 14; sixtieth mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Section-house # 15; sixty-fifth mile east of South McAlester, Choctaw Coal & Railway Company's right of way.

Seven-stall engine-house at South McAlester, on spur track from main line of Choctaw Coal & Railway Company's right of way.

Master mechanic's office near seven-stall engine-house at South McAlester, on Choctaw Coal & Railway Company's right of way.

Roadmaster's office on first mile east from South McAlester, Choctaw Coal & Railway Company's right of way, and between Choctaw Coal & Railway Company's depot and section-house # 1 at South McAlester.

That of the amounts charged in said "Exhibit A," twenty-five thousand five hundred and sixty-three dollars and forty cents is for labor performed and material furnished in the construction of the Kali-Inla hotel, which is situated on the northeast corner of First and Front streets, of South McAlester, Choctaw nation, Indian Territory, said situation being more specifically described as lots 23, 24, 25 and 26 of block 48 of said town.

That of the amounts charged in said account the sum of thirty-two hundred and three dollars and nineteen cents ($3,203.19) is for labor performed and material furnished in the construction of the drug store building situated in South McAlester, Choctaw nation, Indian Territory, on the southeast corner of First and Grand streets, more particularly described as lot one (1), in block forty-eight (48) of said town.

4 Your orators further say that the work done along the line of said railway outside of the town of South McAlester has been done under the superintendence of S. L. Shellenberger, chief engineer for said railway company and for said receivers.

That the same has long since been inspected and received by him and by said receivers, and is now being used by said receivers in operating said railway; that the work done and material furnished in the construction of the Kali-Inla hotel was under the superintend-

ence of H. W. Cox, supervising architect for said railway company and for said receivers.

That said work, up to and including June 3d, was undertaken and carried on in and by virtue of the contract and specifications thereto attached, marked "Exhibit G," and made a part hereof; that the work thereon and materials furnished from and after June 3rd, 1891, was under and by virtue of the directions and specifications hereto attached, marked "Exhibit E," and made a part hereof; that the work performed and materials furnished from and after June 3rd, 1891, was under and by virtue of the direct authority from E. D. Chadick, receiver, and William Nelson, Esq., special master in chancery; that the work perfo-med and materials furnished from and after June 3rd, 1891, was under and by virtue of the special direction of E. D. Chadick and Francis I. Gowen, receivers.

That said Kali-Inla hotel has been built in accordance with the plans and specifications above said and in strict compliance with the same, and has been accepted by the said supervising architect and has been accepted by said receivers and is now occupied and used by them.

That the drug store above said was constructed, the labor performed and material furnished therefor under the specifications furnished and under the direction and authority of said H. W. Cox, supervising architect, and E. D. Chadick, receiver, and that the same has been completed in strict compliance with the specifications so furnished, and has been accepted by said supervising architect.

Your orators are informed and believe and charge the fact to be that the management of said railway by said receivers is such as largely to increase the indebtedness of said railway company and of said receivers and to diminish the prospects of payment of any claims against said railway or against said receivers; that the purpose in so managing said railway property is to force a speedy sale thereof in the interests of eastern capitalists and bondholders.

That said receivers, in handling the property of said railway company, have incurred new liabilities, which under the present management they are totally unable to pay.

5 That your orators are in im-inent danger of losing their debt; that the sale of the effects of said railway company now in the hands of said receivers would, as your orators believe and charge the fact to be, result in total loss to your orators of their debt.

That your orators having furnished material and performed labor upon the buildings herein described are entitled to an equitable lien thereon to secure the payment of their debt.

That citizens of the United States cannot acquire title in fee to lands in the Indian Territory; that the ownership of buildings upon lands in the Indian Territory by citizens of the United States is merely a personal chattel interest; that buildings owned by citizens of the United States upon lands in the Indian Territory are merely personal property.

That said railway company and said receivers are citizens of the United States and not citizens of the Indian Territory; that your orators are citizens of the United States and are not citizens of the Indian Territory.

The premises considered, your orators says that they have expended labor and furnished materials for the construction of chattels personal for the said receivers and said railway company, and are by right *and title* to a preference lien thereon, as well as a general lien on all the property in the hands of said receivers.

Wherefore your orators pray that they have judgment for their said debt against said receivers and said railway company, together with the foreclosure of their equitable lien upon the property hereinbefore described.

That your orators' said lien be foreclosed and rendered secure by the judgment of this honorable court. Further, that said receivers be ordered and directed by this honorable court to speedily pay your orators' said debts.

Further, your orators pray that this honorable court will make such provision with reference to the property of the said railway company in the custody of this honorable court as will facilitate the collection of your orators' debt and as will lead to a more remunerative handling of said property, and, as in duty bound, your orators will ever pray.

W. H. COOPER.

Subscribed and sworn to before me this 8th day of October, 1891.

WILLIAM NELSON, *Clerk*,
By A. D. MATTHEWS, *Dep't.*

A. G. MOSELEY,
LEE SANDELS,
Att'y- for Cooper.

6 Attached to and made a part of said complaint were the following exhibits, which were introduced in evidence and are referred to in the bill of exceptions in the order given below:

Exhibit A.	Full statement of acc't	Page 10
" B.	April, 1891, voucher	" 24
" C.	Voucher of May 9th, 1891	" 25
" D.	Voucher of May and June, 1891	" 26
" E.	Contract of July 7th, '91	" 11
" F.	Statement of work under cont., July 7th	" 27
" G.	Contract May 23d, 1890	" 29
" H.	Voucher of February, 1891	" 38

STATEMENT—EXHIBIT "A."

C. C. & R'y Co. in account with W. H. Cooper & Son, DR.

		April voucher for balance due on line, buildings, round-house, offices for roadmaster and master mechanic, mill-work, etc.....	1,152 73	
May	9.	To labor performed in construction of Hotel Kali-Inla to May 9th, less previous estimates, voucher for.....	11,182 97	
May and June.		To labor performed on Hotel Kali-Inla May 9th to June 3d, final estimate to date, voucher.....	3,287 69	
May	26.	Voucher No. 442, painting coaches.....	92 25	
June		" 487, mill-work, etc.....	791 01	
"		" 610, building 4 houses	612 00	
July	1st.	" 773, mill-work for May and June.	74 95	
		" 1,020, mill-work for July	29 15	
Aug.	25.	" 940, merchandise..... ..	3 45	
	10.	Lumber trans. dep't, not vouchered.....	3 00	
	1.	Three (3) book-cases, att'y's office, 16.00.....	48 00	
		Removing from car and setting up safe in bank bldg.....	51 00	
Sept.	2.	Lumber, motive power d'pt.....	26 16	
		Building 2-story block occupied as drug store and hall.....	3,203 19	
		Platforms around mill, shed, etc.	262 80	
		Hotel Kali-Inla, court-rooms and R. R. offices	11,092 74	
				31,913 09

CREDITS.

		Lumber rec'd from C. C. & R'y Co. to Sept. 16th.....	7,333 80	
		Grady Trading Co., 2 orders..... { 2,047 55 / 398 75 }	2,446 30	
		Draft W. H. Robinson.....	240 53	
		Expense bills to Sept. 16th.....	658 13	
July	22d.	Check	600 00	
Aug.	4th.	" 460.00 less protest...	455 00	
		Mech'l dep't bills, No. 158, 6.68; No. 207, 2.85; No. 298, 5.51....	15 04	
		Shimer coal bill, June and July	10 00	
		" rent " to Sept. 13th	135 00	
		Bill from Co. store-room to 9 | 16, 1,016.63, less mdse. ret'd, 438.97.....	577 67	
		J. J. McAlester order.....	509 90	
				12,981 37
				$18,931 72

7 EXHIBIT E.

Articles of agreement made and concluded this seventh day of July, eighteen hundred and ninety-one, by and between William H. Cooper and James Cooper, of South McAlester, I. T., copartners, as contractors and builders under the firm name of W. H. Cooper & Son, of the first part, and the Choctaw Coal & Railway Company, by its receivers, Edwin D. Chadick and Francis I. Gowen, parties of the second part.

The parties of the first part, for themselves jointly and severally and for their respective executors and administrators and for every

of them do and each of them doth hereby covenant, promise and agree to and with the said receivers, Edwin D. Chadick and Francis J. Gowen, in the manner following—that is to say, that they, the said parties of the first part, for and in considerations hereinafter set forth, shall and will at their own proper cost and expense for all labor, material and other charges, substantially and in a true workmanlike manner and to the entire satisfaction and under the supervision of an engineer and architect appointed by the said parties of the second part, and also with the approval of the said parties of the second part, change, alter, remodel and finish according to the true intent and meaning of and conformably in every respect with the plans and specifications hereunto attached and made a part and parcel of this agreement, the building situated in South McAlester and commonly known as the Hotel Kali-Inla, for United States court purposes and railway offices.

It being hereby agreed and covenanted by and between the said parties of the first and second parts that the specifications, severally signed by the respective parties and hereunto attached, shall be valid, binding to all intents and purposes as if in these articles particularly set forth or incorporated, and further that the decision of the said engineer and architect aforesaid shall be final and conclusive in any dispute which may arise by and between the parties hereto relative to the true purport and meaning of the plans and specifications hereunto attached; and it is hereby covenanted and agreed and distinctly understood by and between the parties to this agreement that the said parties of the first part shall not let or transfer this contract for changing, altering, remodeling and furnishing the said building to any other person or persons, but will severally give their supervision to its complete performance, and it is hereby further covenanted and agreed by and between the said parties hereto that upon notice from the architect aforesaid, or from the said parties of the second part, the said parties of the first part, their respective executors or administrators, shall and will take down, change, alter and reconstruct at their own proper cost and expense any and all unfit and unsatisfactory workmanship; that such removal, change or alteration shall be required within two weeks next after the work objected to as aforesaid.

8 And it is hereby further covenanted and agreed by and between the parties hereto that in case any omissions, alterations, additions or extra work from or to the said plans and specifications shall by the said parties of the second part be thought necessary or expedient to be made or done during the course of the remodeling and finishing the said building, the said omissions, alterations, additions or extra work shall not in any way invalidate these articles of agreement, but the particulars in writing of such proposed omissions or alterations or additions shall be signed and delivered by the said party of the second part to the said parties of the first part, who shall and will thereupon make and perform such additions or allow such omissions accordingly; and thereupon if the parties of the first and second parts cannot forthwith agree upon the proper increase to or abatement from the consideration money

hereinafter named on account of the said additions, alterations, extra work or omissions, then the same shall be referred to the decision of the engineer and architect and two disinterested persons, one of whom shall be chosen by each of the said parties, and they two shall call in an umpire, and the joint award or determination of a majority of the said referees relative to the value of the said additions, extra work, alterations or omissions, and of the consequent increase or abatement of the consideration money aforesaid shall be conclusive and binding upon both the said parties, their successors or their executors and administrators respectively.

The said Edwin D. Chadick and Francis I. Gowen, parties of the second part, do hereby covenant, promise and agree to and with the said parties of the first part that for and in consideration of the changes, alterations, remodeling and finishing said building as aforesaid in conformity with the plans and specifications, as well as the true and faithful performance of all and every the covenants and agreements herein contained, on the part of the said parties of the said first part, the said parties of the second part will pay or cause to be paid unto the said parties of the first part the sum of ten thousand two hundred and fifty dollars ($10,250.00).

The said parties of the second part do hereby covenant and agree to and with the said parties of the first part that all material that they, the said parties of the second part, may now have on hand and which can be used in the remodeling and finishing of the said building as aforesaid, will be furnished to the said parties of the first part at the first cost plus freight on same to South McAlester.

The said parties of the first part do hereby covenant and agree to and with the said parties of the second part that they the said parties of the first part shall and will receive and take such material as the said parties of the second part may have on hand as aforesaid from the yard and store-room of the said parties of the second part, do all the hauling and all other labor necessary for the completion of said building as aforesaid.

9

And it is hereby further covenanted and agreed by and between the said parties of the first part and second part that during the changing, altering, remodeling and finishing the said building as aforesaid, the said William H. Cooper and James Cooper, copartners as aforesaid, their several executors or administrators shall and will save and keep harmless and indemnify the said parties of the second part from all actions, suits, costs and penalties by reason of accident, neglect or other cause whatsoever, by or through the acts or — parties — default of any person or persons employed by the said party of the first part during the progress of the work, and all losses, costs, damages, penalties or expense thereby incurred or occasioned, shall be borne, suffered and paid by the said parties of the first part.

The said parties of the second part do hereby covenant and agree to and with the said parties of the first part, that for and in consideration of the finishing the said building as aforesaid in conformity with the plans and specifications, as well as of the true and faithful performance of all and every the covenants and agreements herein

contained, on the part of the said parties of the first part, the said parties of the second part shall and will well and truly pay or cause to be paid unto the said parties of the first part, partial payments, based upon estimates made by the engineer and architect, subject to abatement therefrom or increase thereto, in manner aforesaid, and at the respective times hereinafter mentioned for the payment thereof—that is to say, in each and every month during the remodeling and finishing of the said building as aforesaid, deducting ten per centum of the amount thereof, to be reserved by the said party of the second part as a security and guaranty for the true and faithful performance of the agreements and covenants of the parties of the first part herein contained, and when within ten days after the said building shall be finished, and all stone, soil, rubbish and superfluous matter shall have been entirely removed, the said parties of the second part shall and will well and truly pay or cause to be paid unto the said parties of the first part, their several executors or administrators, the full and entire balance and residue then remaining due and unpaid, including all sums of ten per centum reserved from each and every monthly settlement as aforesaid, it being understood that no interest shall accrue or be payable upon any sums so reserved.

Witness our hands and seals this — day of July, eighteen hundred and ninety-one.

Sealed and delivered in presence of—

——. [SEAL.]
——. [SEAL.]
——. [SEAL.]
——. [SEAL.]

The Hotel Kali-Inla building will be remodeled, altered and changed from the originals, designs and plans for hotel purposes into suitable apartments for United States court and railway offices, as represented by tracings hereunto attached, and marked "Exhibit A," "Exhibit B," and "Exhibit C," and forming a part and parcel of these specifications.

The west half of the first floor being fifty (5-) feet by one hundred (100) feet, will be remodeled, altered and changed from the original design as aforesaid, into suitable rooms and apartments for the United States court purposes, as represented by tracings hereunto attached, and marked "Exhibit A" and "Exhibit B."

Tracing marked "Exhibit A" shows original plan and design, the alterations and changes indicated and marked thereon. Tracing marked "Exhibit B" shows plan and design for United States court purposes.

All alterations and changes in partitions, chords, columns, etc., must be well and carefully made, and in removing same extra care and precaution must be exercised in erecting in a strong and substantial manner false work necessaru to support the building, guarding against damage by settled or otherwise during the tearing out of old partitions, chords or columns, etc., and replacing new ones.

All material taken from old partitions, chords and columns, re-

sulting from said alterations and changes, must be well and carefully kept from damage or injury and utilized in the further construction of the building.

Entrance to court-room.—Fourteen feet by fourteen feet, and located in the south and east corner of the west half of the building, and adjoining stone division wall, as represented on tracing marked "Exhibit B."

The walls will be wainscoted three and one-half ($3\frac{1}{2}$) feet high with one (1) inch by four (4) inch beaded ceiling, with one (1) inch by ten (10) inch base, one (1) inch by two (2) inch noseing and one (1) inch by seven*th*-eight-s ($\frac{7}{8}$) inch scotia mould, under noseing; wainscoting will be painted three (3) coats maroon, thoroughly
11 rubbed down to uniform surface and then given one (1) coat of best varnish; walls above wainscoting will be ceiled vertically with five-eight-s ($\frac{5}{8}$) beaded ceiling, clear as possible, will be given one (1) coat of filler and three (3) coa*r*s of hard oil, to be rubbed down before putting on last coat; the ceiling will consist of one (1) panel, the chords of which will be of the latest improved East Lake pattern; the panel will be ceiled with one (1) inch by twelve (12) inch (surfaced one side) boards, canvassed with strong and durable canvas*s*, well and thoroughly tacked, then papered with a good strong grade of lining paper to receive the wall paper, which must be strong, durable and of rich and pleasing design.

The floor will be of one (1) inch by four (4) inch D. & M. flooring; the front door will be double, three (3) feet by nine and one-half ($9\frac{1}{2}$) feet sash and of East Lake design, furnished with the latest improved designs of Astracha*m* bronze mortice, *stoor* door locks, solid plain bronz- knobs or latches, solid bronze foot and chain bolts and bronze loose pin butts; over the door will be marginal windows glazed in a first-class workmanlike manner with cathedral glass of different colors, provided with solid bronze sash centers and latest improved transom lifts; glass for doors to be American plate glass.

The front window will consist of two parts; window proper, which will be five (5) feet by six (6) feet plate glass, set in a strong and durable frame of East Lake design, and a transom window same as for transom window over doors; the window proper will be rigid and stationary and provided with strong window guard of iron and ornamentations of bronze; door and window casings and frames will be paneled and of East Lake design and finished in hard oil, receiving three (3) coats in the same manner as ceiling for walls outside three (3) coats of paint.

Court-room.—Will be in south and west part of building and will consist of an auditorium twenty-nine feet by thirty-two feet, separated from bar and court by a strong wire fence made from number six (6) wire, two and one-quarter ($2\frac{1}{4}$) mesh, three feet high with one single gate, tubular posts and painted bronze.

The auditorium will be provided with high back and comfortable seats, making a seating capacity of one hundred and seventy persons; the floor will be of one-inch by four-inch D. & M. flooring; walls will be wainscoted same as in entrance; walls above wainscot-

ing will be sealed with boxing surfaced one side, canvassed and papered in same manner as ceiling of entrance.

The ceiling of court-room will be paneled, chords forming panels to be finished in East Lake pattern and hard-oiled, three coats; posts supporting chords and building to be finished in East Lake and hard-oiled same as chords; front windows, four in number, will be of same kind and finish as window in entrance; windows
12 on west side will be two-light, double strength, suspended by weights and provided with bronze sashs fasteners; casing and frame to be paneled and of East Lake design, provided with plinth blocks, rosettes, etc., and finished in three coats of hard oil, being thoroughly rubbed down before putting on last coat and having one coat filler before first coat of hard oil is put on.

In the north end of court-room and near center will be placed a rostrum eight feet by twelve feet and fifteen inches above floor, with two pair of steps for same, one at each end of rostrum; floor will be of one-inch D. & M. flooring; front and sides of East Lake design, finished in hard oil, same as door and window casings. Rostrum will be provided with a judge's desk two and one-half ($2\frac{1}{2}$) feet wide and eight feet long, made counter front with incline top, front and sides full, and finished in a neat and pretty style after East Lake design.

To the left of the judge's rostrum will be the jury-stand, which will consist of two rises, each four and one-half feet wide by twenty feet long; first rise to be fifteen inches above floor and second rise seven inches above first rise. Front and one end (next to bar) will have wire fence with one single gate same as fence separating court proper from auditorium.

In front of judge's rostrum will be a large table, nicely made, and finished in hard oil, six feet by twelve feet, for bar.

To the front and a little to the right of the judge will be a prisoner's box six feet by eight feet, fifteen inches above the floor, enclosed with wire fence same as one separating court from auditorium.

Two additional stands, three feet by six feet, for witness and court cryer; stand for court cryer will be supplied with desk two feet by three feet, finished in hard oil.

Door from entrance to court will be double-swinging panel doors three feet by seven and one-half feet, casings to be of East Lake pattern, with plinth blocks and rosettes, and finished in hard oil same as window casings.

There will be two doors, panel three feet by seven feet, East Lake casings, plinth blocks, rosettes, and finished in hard oil same as window casings in north wall, one on each side of the judge's rostrum.

North of court-room and on west side will be clerk's office, seven feet by eighteen and one-half feet, provided with counter and ticket window, said ticket window to be three feet high by four feet wide, hung with weights, using Polmus improved axle pullies and supplied with lock. Counter will be nicely made of well-seasoned native pine and finished in hard oil, giving one coat filler and

three coats hard oil, to be thoroughly rubbed down before putting on last coat.

13 Walls will be wainscoted, canvassed and papered, same as court-room, except east wall, which will be panel, eight feet high, with transom windows over; said transom windows will be provided with strong sash centers and bronze transom lights of the latest improved pattern, each transom to have a bronze foot-bolt fastener; there will be one door in panel partition communicating with hall, said door to be panel door, one and three-quarters inches (1¾) by three (3) feet by seven (7) feet, furnished with bronze butts and knobs and Yale night latch, casings of East Lake pattern; panel partition will have one coat filler and three coats hard oil.

Windows in west wall will be made same as those in west wall of court-room.

Floor will be of one (1) inch by four (4) inch D. & M. match flooring. Ceiling will be ceiled with twelve-inch boxing, well seasoned and surfaced to a uniform thickness, put on close and nailed well, leaving as small a space between boards as it possible. Then a strong medium-weight canvass, well stretched and tacked. One coat of lining paper to receive the wall paper, which must be strong and of neat design.

Marshal's office will be in north and west part of the building and adjoining clerk's office, and communicating with clerk's office and court-room by hallway. Office will be sixteen and one-half feet (16½) by eighteen (18) feet, provided with counter and ticket window, same as clerk's office, and to plan attached, windows in west wall to be furnished same as in west wall of court-room. Walls, floor and ceiling to be same finish and make as clerk's office.

To the east of the clerk's and marshal's office is a hallway communicating with court-room and second floor, to be finished same as offices and according to plan attached.

In the north and east corner of the west half, and communicating with marshal's office by hallway along north wall, will be a jail, eight feet wide by forty feet long; floors will be laid double, walls double plank. First course vertic*le*, second course horizontal. One heavy door three feet wide and seven feet high and four inches thick, to be provided with grate for ventilation; in west and north wall will be placed near ceiling three ventilators; ceiling will be double box same manner as walls, north window to have strong iron bars put in firmly and in such a manner that window can be left open. Doors and windows in north wall must be finished in a good manner and of same finish as other doors and windows before mentioned.

On second floor the west hall and west tier of rooms will be finished, the doors and windows of same finish as windows in west wall court-room, and doors same as doors in court-room.

14 Walls will be wainscoted three and one-half (3½) feet high, given three coats of maroon paint above wainscoting, and ceiling will be ceiled with four-inch beaded ceiling, given one coat filler, three coats hard oil, and outside doors and windows not in-

cluded in the foregoing to be finished in the same manner as before mentioned.

Stairways will be four feet wide, eight-inch rise, eleven-inch tread, nine-inch spring.

East part of building, being twenty-five feet front and one hundred and six feet deep, will be furnished for railroad offices as per tracing marked "Exhibit C." First floor will be in two apartments, separated by a hallway, eight feet wide, leading to second floor.

The two partitions forming hall will be panel, eight feet high, finished in hard oil, giving one coat filler, three coats hard oil, rubbing down thoroughly before putting on last coat; above will be transom windows of white ground glass, provided with bronze sash centers, foot-bolt fastenings and bronze transom lifters.

Stairway will be four feet wide, seven-inch rise, eleven-inch tread, with two landings. First landing five feet above floor. Windows in east wall will be two-light, hung with weights, using Palum's improved axel pulleys and best sash cord, each window to be supplied with bronze sash-fasteners. Front windows will be of plate glass and marginal transom; doors sash with marginal transom windows, made and finished in same manner as entrance to court-room. Window casings to be made and finished same as for windows in west wall of court-room.

Front part will be finished for treasurer's department. Floor will be of four-inch D. & M. flooring. Ceiling will be of select well-seasoned native pine, surfaced and sized to a uniform width and thickness, battoned and paneled in East Lake design, using rosettes, and painted. Walls will be wainscoted three and one-half feet high, painted three coats maroon; above wainscoting will be ceiled vertically with four-inch beaded ceiling, given one coat filler, three coats hard oil.

A bank counter of neat design; counter railing thirty inches high with fret borders, two openings and partition screen six feet high with one door, door to have Yale spring lock, knob on inside and requiring key on outside; counter railing and partition screen *figer* number forty-nine (49) of Ludlow Saylor Wire Company's catalogue.

Rear apartment will be finished for auditor's office. Doors and windows made and finished as before mentioned; floor, ceiling and walls to be same as treasurer's office. East hall and east tier of rooms to be finished same as west hall and west tier of rooms, also doors and windows; the whole to be done in a first-class workmanlike manner. All material furnished is to be of first quality, strong and durable and the whole to be completed for occupancy before September 1st, eighteen hundred and ninety-one (September 1st, 1891).

——— ———. [SEAL.]
——— ———. [SEAL.]
W. H. COOPER & SON. [SEAL.]
H. W. COX, [SEAL.]
Supervising Architect.

EXHIBIT "B."

Form No. 11—5 M-2-90. Duplicate.

The Choctaw Coal and Railway Company to W. H. Cooper, South McAlester, I. T., Dr.

April.			
1891.	To labor performed in the construction of the following buildings, as per statement attached, as follows:		
	Mill-work	$487 66	
	Engine-house, South McAlester	1,043 00	
	Roadmaster's office	200 00	
	15 section-houses complete	7,648 85	
	Loading and unloading 2 cars fence posts	16 50	
	Labor on water tanks	129 86	
	Unloading material So. McAlester yard	245 00	
	4 depots complete	2,222 02	
	Grading siding to plaining mill	135 73	
	Master mechanic's office	150 00	
	Cattle-guards	145 00	
		$12,423 62	
	Less previous estimates	11,270 89	
	Amount due	$1,152 73	
	Final and conclusive for all work performed in the construction of the above buildings		$1,152 73

I hereby certify that the above is correct.

S. L. SHELLENBERGER,
Chief Engineer and Ass't Mngr.

16 EXHIBIT "C."

Form No. 11—5 M-2-90. Duplicate.

The Choctaw Coal and Railway Company to W. H. Cooper & Son, South McAlester, I. T., Dr.

1891.			
May 9th.	To labor performed in the construction of the Hotel Kali-Inla to May 9th, 1891, as per statement hereunto attached	$29,759 52	
	Less previous estimate	18,576 55	
	Total	11,182 97	$11,182 97

I hereby certify that the above is correct.

S. L. SHELLENBERGER,
Chief Engineer and Ass't Mngr.

EXHIBIT "D."

Form No. 11—5 M-2-90. Duplicate.

The Choctaw Coal and Railway Company to W. H. Cooper & Son, South McAlester, I. T., Dr.

1891.			
May and June.	To labor performed in the construction of the Hotel Kali-Inla to June 3d, 1891, as per statement hereunto attached:		
	Total to June 3d, 1891	$33,047 21	
	Less previous estimates	29,759 52	
	Balance	$3,287 69	
	The above is final and conclusive as to all labor performed in the construction of the above building up to and including June 3d, 1891.		
	Total		$3,287 69

I hereby certify that the above is correct.

S. L. SHELLENBERGER,
Chief Engineer and Ass't Mngr.

STATEMENT—EXHIBIT "F,"

Showing material furnished and labor performed in completing the Hotel Kali-Inla building for U. S. court and C. C. & R'y Co. offices as per contract with the receivers, dated July 7th, 1891, as follows:

For material furnished and labor performed to complete building according to original specifications			10,250 00
For extra work and material furnished in addition to original plans and specifications as provided for in contract of July 7th, 1891:			
17 Court-room:			
Lumber, S. & S., 804 ft	@ 16 00	12 86	
Changing and altering chords, etc.		50 00	
One additional semicircular clerk's desk		40 00	
			102 86
Changing main stairway and hallway:			
Lumber, S. & S., 396 ft.	@ 16 00	6 34	
" S. & S., 800 "	15 00	12 00	
D. & M. ceiling, 6,000 "	18 00	108 00	
500 lin. ft. $\frac{7}{8}$–$\frac{1}{4}$ round	1c.	5 00	
2 door frames 3 x 7 ft. and 2 x 3 transoms	5 00	10 00	
4 " " 5 x 7 ft. " 2 x 5 "		7 00	
1 transom sash 2 x 5, 4 lt.		4 10	
1 arch frame 8 x 9		10 00	
1 " " 5 x 9		10 00	
1 door frame 2^8 x 6^8		5 00	
1 " " 2^8 x 6^8		2 50	
150 lin. ft., E. L. base	5c.	7 50	
250 " " casing	5c.	12 50	
16 angle blocks	12½c.	2 00	
16 plinth do.	12½c.	2 00	
250 lin. ft., $\frac{7}{8}$ scocia	1c.	2 50	
			206 44
Changing in jury-room:			
480 feet 4-in. flooring	@ 18 00		8 64
Changing closets and stairway:			
Lumber, 1,809 ft	16 00	28 94	
Flooring, 2,000 " 4-in	18 00	36 00	
1 door frame 3 x 7 and 2 x 3 transom		5 00	
			69 94
Carried forward			10,637 88

STATEMENT—EXHIBIT "F"—Continued.

Amount brought forward			10,637 88
One additional door and transom, judge's private office		7 00	
Changing clerk's and marshall's office ticket window (Frame and sash extra size.)		5 00	12 00
Changing stairway in bank-room:			
300 feet 4-in. ceiling and flooring, extra	18 00	5 40	
10 lin. ft. E. L. base, 10 L. ft. E. L. band mould	5c.	1 00	
30 " " ¼ round	1c.	30	
30 ft. lumber	16 00	80	
			7 50
Extra labor:			
Stairway and hall, 1st floor		200 00	
" " " 2d "		60 00	
Jury-room		25 00	
Judge's private office		10 00	
Marshall's and clerk's offices		50 00	
			345 00

Extra hardware:			
300 lbs. com. nails	3 00	9 00	
300 lbs. cas. "	3 40	10 20	
1 mortise lock complete		2 00	
1 pr. 4-in. x 4-in. butts		25	
			21 45
18 Water-closets:			
Lumber, 1,140 ft	16 00	17 24	
" 400 " drop siding	18 00	7 20	
1¾ M shingles	4 50	7 87	
4 doors 2^6 x 6^6	2 25	9 00	
4 rim-knob locks complete	50c.	2 00	
4 pr. butts	15c.	60	
Labor on same		25 00	
			68 91
Total			$11,092 74

I hereby certify that the foregoing is correct.
(Signed)

H. W. COX,
Supervising Architect.

"EXHIBIT G."

Articles of agreement made and concluded this twenty-third day of May, 1890, anno Domini one thousand eight hundred and ninety, by and between William H. Cooper and James Cooper, of South McAlester, I. T., copartners, as contractors and builders under the firm name of W. H. Cooper & Son, of the first part, and Edwin D. Chadick, of South McAlester, I. T., of the second part.

The parties of the first part for themselves jointly and severally, and for their respective executors and administrators, and for every of them do and each of them doth hereby covenant and promise and agree to and with the said Edwin D. Chadick, of South McAlester, I. T., in the manner following—that is to say, that they, the said parties of the first part, their several executors and administrators, for and in consideration hereinafter set forth, shall and will at their own proper cost and expense for all rock, labor, machines, tools and other charges, with all other material furnished by Edwin D. Chadick, party of the second part, substantially and in true workmanlike manner, to the entire satisfaction and under the supervision of H. W. Cox, the architect appointed by said party of the second part, and also with the approval of the said party of the second part, erect, build, set up and finish according to the true intent and meaning of and conformably in every respect with the plans, elevations, section drawings, etc., furnished from time to time as is necessary, and the specifications hereunto attached, a building for the use of the said party of the second part, on the ground lots twenty-one to twenty-six, inclusive, block forty-eight, of the original plat of South McAlester, I. T., and fronting Front street and First street, and upon the sight therein designated by the said party of the second part.

It being hereby agreed and covenanted by and between the said parties of the first and second part *the* the specifications, severally signed by the respective parties and hereunto attached, shall be valid

and binding to all intents and purposes as if in these articles particularly set forth or incorporated; and further that the decision of the said H. W. Cox, the architect aforesaid, shall be final and
19 conclusive in any dispute which may arise by and between the parties hereto relative to the true purport and meaning of the plans and drawings furnished and the specifications hereunto attached; and it is hereby covenanted and agreed and distinctly understood by and between the parties to this agreement, that the said parties of the first part shall not let or transfer this contract for erecting the said building to any other person or persons, but will severally give their supervision to its complete performance; and it is hereby further covenanted and agreed by and between the said parties hereto, that upon notice from the architect aforesaid, or from the said party of the second part, the said parties of the first part, their respective executors, administrators shall and will take down, change, alter and reconstruct at their own proper cost and expense any and all unfit and unsatisfactory workmanship; that such removal, change or alteration shall be required within two weeks next after doing the work objected to as aforesaid.

And it is hereby further covenanted and agreed by and between the parties hereto, that in case any omissions, alterations, additions or extra work from or to the said designs, plans and specifications shall, by the said party of the second part, be thought necessary or expedient to be made or done during the course of the erection or the construction of any part of the said building, the said omissions, alterations, additions or extra work shall not in any way invalidate these articles of agreement, but the particulars in writing of such proposed omissions, or alterations, or additions shall be signed and delivered by the said party of the second part to the said parties of the first part, their several executors or administrators, who shall and will thereupon make and perform such additions, or allow such omissions accordingly; and thereupon if the said parties of the first and second parts cannot forthwith agree upon the proper increases to or abatement from the consideration money hereinafter named on account of the said additions, alterations, extra work or omissions, then the same shall be referred to the decision of three disinterested persons, one of whom shall be chosen by each of the said parties, and they two shall call in an umpire, and the joint award or determination of a majority of the said referees relative to the value of the said additions, extra work, alterations or omissions and of the consequent increase or abatement of the consideration money aforesaid shall *to* be conclusive and binding upon both the said parties, their successors or their executors and administrators respectively.

And the said parties of the first part do hereby covenant and agree to and with the said parties of the second part, that on Monday morning of each week, commencing with the first Monday after work shall have been commenced, and thereafter until the said building shall be finished, they the said parties of the first part shall and will make out and furnish to the said architect, a
20 careful and detailed statement and exhibit of the materials

used in and towards the actual erection and construction of the said building and of the work done thereon during the week next preceding, not including in such statement any such materials intended or prepared for use therein, if the same be not at the date of such statement actually and permanently set up or worked into the said building.

The said Edwin D. Chadick, party of the second part, does hereby covenant, promise and agree to and with the said parties of the first part, that for and in consideration of the erection, construction and finishing of the aforesaid building, in conformity with the plans and specifications, as well as the true and faithful performance of all and every the covenants and agreements herein contained, on the part of the said parties of the first part, the said party of the second part shall and will pay or cause to be paid unto the said parties of the first part the following prices for—

Putting in all rubble masonry	$6.50	per cu. yd.
" " range masonry	8.50	per cu. yd.
" " rubble masonry, area walls	3.50	per cu. yd.
" " copings	1.25	per cu. yd.
" " paving	18c.	per sq. ft.
" " stone drain masonry, area walls	20c.	per lin. ft.
" " door and window sills and caps	2.65	each.
" " 1st, 2nd and 3rd floor joists, posts and continuous chords in 1st floor for the support of the 2d floor joists, six rows of studding and wall plates, for the support of third floor joists, and all timber work necessary for the support and safety of masonry, which includes lintels of timber, for	$1,250	
Completing first floor front to top of caps, masonry only	560	00
Pointing all range-work and pilasters, dressing stone to receive cornice	98	00

Force account plus ten per centum for tearing out old walls on account of change in original plan—

Excavating for foundation	60c. per cu. yd.
Excavating for area walls	40c. per cu. yd.
Excavating, wheelbarrow work	60c. per cu. yd.

All carpenter work, hauling, handling, surfacing and putting in place all material and work such as floor and ceiling joists, bridging, and wall plates, plates, headers, studding, girts, girders,
21 posts, corbels, braces, rafters, roof boards, sheathing, ceiling and flooring where common boxing is used—

On first floor	$16.00 per 1,000 ft., B. M.
On second floor	18.00 per 1,000 ft., B. M.
On third floor and above	20.00 per 1,000 ft., B. M.

Making and putting in place single door and window frames, which includes hanging and fitting door, putting locks, transom lifts and hanging transom windows, and hanging and fitting windows, in short making the door and frame complete, and window and frame complete, except the painting, $9.00 in frame walls; $10.00 in stone walls, each.

Making and putting in place, hanging windows, 4 dormer double Gothic windows for center tower, complete except shingling and painting, $50.00 each.

Making and putting in place, hanging windows, 17 dormer windows, complete except shingling and painting, $25.00 each.

D. & M. flooring in place..... $3.00 per sq.
Wainscoting, complete..... $12.25 per lin. ft.
East Lake base..... 25c. per lin. ft.
Plain base..... 15c. per lin. ft.
Battons, 2½c., and for D ceiling to bank part..... 4c. per lin. ft.
Casing with East Lake mouldings, posts and chords..$1.50 per lin. ft.

Making double doors, swinging frame, hanging all complete except painting, 6 inside doors, $10.00 each double door.

Making double sliding-door frames, hanging all complete, except painting, inside $20.00 each double door.

Panel partitions 8 feet high..... $4.00 per lin. ft.

Front stair complete, 1st floor to 2nd floor.
Front stair complete, 2nd floor to 3rd floor.
Front stair complete, 3rd floor to 4th floor.

Counter and fixtures for hotel office.....
Five feet by eight feet openings through center wall, castings complete, except paint, each.....
East Lake door and window casings.....6c. per lin. ft.
Corner blocks..... 16c. each
Plynth.....12½c. each.
Base corners.....12½c. each.
First and second main cornice.....$2.10 and $1.75 per lin. ft.
Hoods, mansard and deck.....$1.05 per lin. ft.
Tower cornice.....$1.75 per lin. ft.
Belts.....50c. per lin. ft.
22 3 member brackets, complete.....12 x 24, $1.35 each.
3 " " " .....18 x 24, $1.75 each.
3 member brackets, complete..... 7 x 14, $1.10 each.
3 " " " ..... 8 x 11, $1.10 each.
5 " " " .....12 x 28, $1.85 each.
5 " " " .....12 x 14, $1.65 each.

(These do not include drops and rosettes, which are extra.)

Siding partitions and ceilings where sized and select boxing is used..... $25.00 per M.
Making, putting up, painting, bronzing ball, etc., ready for flag..... $25.00
1 member brackets, complete, 4 x 4 x 9..... 75c. each.

Shingling, mansard and sides:

Below second floor	$8.00 per sq.
Mansard and dormer windows	9.00 per sq.
Towers	10.00 per sq.

The said party of the second part does hereby covenant and agree to and with the said parties of the first part that all material (with the exception of the rock and stone) used in the construction of said building will be furnished to the said parties of the first part free of cost at the yard and store-room of the said party of the second part.

The said parties of the first part do hereby covenant and agree to and with the said party of the *first* part that they, the said parties of the first part, shall and will furnish all stone and rock necessary, receive and take all material used in the erection and construction of said building (except the rock or stone) from the yard or store-room of the said party of the second part, do all of the hauling, machine-work, and all other labor necessary for the completion in a satisfactory manner of the said building.

And it is hereby further covenanted and agreed by and between the parties hereto, that all material, such as lumber and timber, to be used in the construction of said building, shall and will be delivered to the said parties of the first part, at the yard of the said party of the second part, in the same condition that the said material is received by the said party of the second part, from the saw-mills or other sources.

And it is hereby further covenanted and agreed by and between the said parties of the first and second parts that during the construction of said building and until the completion thereof the said William H. Cooper and James Cooper, copartners as aforesaid, their several executors or administrators, shall and will save and keep harmless and indemnified the said party of the second part from all actions, suits, costs and penalties, by reason of accident,
23 neglect or other causes whatsoever, by or through the acts or default of any person or persons employed by the said parties of the first part in the erection of the building, and all losses, costs, damages, penalties or expense thereby incurred or occasioned shall be borne, suffered and paid for by the said parties of the first part.

The said party of the second part does hereby covenant and agree to and with the said parties of the first part that, for and in consideration of the erection, construction and finishing the aforesaid building in conformity with the plans and specifications, as well as of the true and faithful performance of all and every the covenants and agreements herein contained, on the part of the said parties of the first part, the said party of the second part shall well and truly pay, or cause to be paid, unto the said parties of the first part the various prices for the various classes of work, as aforesaid, subject to abatement therefrom or increase thereto in manner aforesaid, in the several instalments and at the respective times hereinafter mentioned for the payment thereof—that is to say, in each and every month during the construction of the said building such sum as by

the statement of materials used and work done, and at the prices aforesaid, nevertheless deducting ten per centum of the amount thereof, to be reserved by the said party of the second part as a security and guaranty for the true and faithful performance of the agreements and covenants of the parties of the first part herein contained, and when and as soon after the said building shall be completely erected, constructed and finished, and all stone, soil, rubbish and superfluous matter shall have been entirely removed, the said party of the second part shall and will well and truly pay, or cause to be paid, unto the said parties of the first part, their several executors or administrators, the full and entire balance and residue then remaining due and unpaid, including all sums of ten per centum reserved from each and every monthly settlement as aforesaid, it being understood that no interest shall accrue or be payable upon any sums so reserved.

Witness our hand and seal this — day of —, one thousand eight hundred and ninety.

W. H. COOPER & SON. [SEAL.]
—— ——. [SEAL.]
H. W. COX, *Architect*, [SEAL.]
For E. D. CHADICK.

Sealed and delivered in presence of—
—— ——.

24 EXHIBIT "H."

Form No. 11—5 M-2-90. Triplicate.

The Choctaw Coal and Railway Company to W. H. Cooper & Son, South McAlester, I. T., Dr.

1891.			
Feb'y.	To labor performed in the construction of the Hotel Kali-Inla to M'ch 1, 1891, as per statement hereunto attached	$18,576 55	
	Less previous estimates	13,617 93	
		$4,958 62	
	Less 28 8/10 cord rock furnished	72 00	
	Am't due	$4,886 62	
	Total		$4,886 62

I hereby certify that the above is correct.

S. L. SHELLENBERGER,
Chief Engineer and A. M.

Be it further remembered that on the 24th day of October, 1891, at the hearing before the master in said cause, Francis I. Gowen, acting receiver of the Choctaw Coal and Railway Company, filed his answer to the complaint of said Cooper & Son, which answer is in words and figures as follows:

In the United States Court in the Indian Territory.

In the Matter of the Motion of W. H. Cooper & Son to Allow Account.

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

Now comes Francis I. Gowen, acting receiver herein, and for answer to the said motion and complaint of said W. H. Cooper & Son, respectfully shows to the court that in this cause on the 8th day of January, 1891, Edwin D. Chadick and this respondent were appointed by this court receivers of the Choctaw Coal & Railway Company and on the same day duly qualified and entered upon the discharge of their duties as such, under the orders of this court, and from that day until August 28th, 1891, said Chadick and respondent, as receivers as aforesaid, had possession and control of all the property of defendant company and the entire management of its business and affairs under the orders of this court; that afterwards, on the 28th day of August, 1891, by an order of this court, the powers of said receivers were vested in this respondent and he was charged with the active duties of receivers as aforesaid, and since that date has remained in sole charge, discharging all the duties of acting receiver under the said order, and as such acting receiver now answers herein.

25 2nd. And said Gowen, acting receiver, further answering says that the work charged in the account of petitioners as having been done on the Kali-Inla hotel, to wit, item of May 9th: "Labor performed in construction of Hotel Kali-Inla," $11,182.97, and that of May and June, labor performed on the same building, $3,287.69, are alleged to have been done after the appointment of the receivers, and this respondent says that it is not true that the said work was done or material furnished at the special instance and request of the receivers, and it is not true that the said receivers ever promised or became bound to pay for the same the amounts charge- therefor in Exhibit A or any other amounts, or that said amounts so charged therefor are the reasonable values of the materials furnished and labor performed as charged; and it is not true that said receivers ever gave to the petitioners any recognition by voucher or otherwise of such indebtedness to petitioners or became bound to pay the petitioners the sum of $31,913.09 or any other sum, as charged in the complaint, and respondent charges the fact to be that said work and materials, if done and furnished, were so done and furnished by the petitioners without any contract or agreement with said receivers, written or verbal, but upon a verbal agreement with said Receiver Chadick, made without the knowledge or consent of his coreceiver and without any authority or order of court to make the same or approving thereof; that said work was not necessary for the preservation of the estate or the prosecution of the business in the hands of the receivers, and respondent denies that he, as receiver, is liable for the same or that the cost thereof

is a proper charge against the funds and property in his hands as receiver.

3rd. The respondent further says that it is not true that the receivers ever made the contract of July 7th or any other contract with the petitioners by which they agreed to pay petitioners $10,250 for certain additional work and material to be thereafter performed and furnished on the said Kali-Inla hotel, the particulars of which are given in the account and the pretended contract, plans and specifications filed with petitioner's complaint, amounting to the sum of $11,092.74, nor was said work or material done or furnished at the instance or request of said receivers, nor did they ever promise or become bound or liable to pay the same. But the respondent says that about the 3rd day of June, 1891, as he is informed and believes, and arrangement was made with the petitioners by his coreceiver Chadick with the approval of William Nelson, Esq., special master in this cause, and the Honorable James M. Shackelford, judge of this court, to make certain alterations and additions to the said hotel building, to fit it up for a United States court-room and rooms necessary for the officers of the court, which work was done and materials furnished by the petitioners, but
no contract for the same was ever signed by the receivers or
26 or either of them; that as to whether said work was done and material furnished according to the arrangement made, or whether it was worth the several sums charged therefor in petitioners' account, or whether the changes were made as stated in said account and as to the value of the work done and material furnished in making said changes this respondent has no knowledge or information sufficient to form a belief, and therefore insists upon strict proof of each and every item of the same; that if it shall be found by the court that the said work and materials are a proper charge against the funds in the hands of the receivers he ought not to be required to pay more than what may be found justly and equitably due the petitioners as the true value of the said work and materials regardless of any pretended contract therefor.

4th. Said Gowen, acting receiver, further answering, says that as to whether the work and materials charged for in the item of $3,203.19 for the drug store and hall were done and furnished or were worth the prices charged, this respondent has no information sufficient to form a belief, and therefore demands proof of each item; and further, it is not true that the said two-story building, charged in petitioners' account as a "drug store and hall," was built at the instance and request of the receivers, or that they, or either of them, ever made any contract therefor or agreed or promised to pay for the same, or in any way became bound for the same. And respondent avers that said building was not erected for the use of the company or the receivers, or for the benefit of the trust; that neither the company or the receivers had any use for such a building, and it has never been accepted or used by them; that no order of court was ever made or asked for authorizing the receivers to build the same, and any contract or agreement to build or pay for the same would, if made by the receivers, or

either of them, be *ultra vires* and the price thereof could not be charged to the trust estate; but respondent avers that such building was erected for private purposes only, solely for the use of Doctor Lowrey as a drug store and hall, and was not within the scope of the receivers' authority, of all which the petitioners were fully cognizant. Wherefore he says the trust estate is not liable therefor.

5th. Respondent further says that the item charged in the account in June, voucher 487, "mill-work, etc.," $791.01, should be for $709.99 only; that as to whether the items charged in the account August 1st and 10th, $3.00, $48.00, $51.00; Sept. 2nd, $26.16, and platforms around mill shed, etc., are correct, whether said work was done and material furnished, or whether the same was worth the prices charged for the same, this respondent has no knowledge or information sufficient to form a belief, and demands strict proof of each item.

27 6th. And respondent further says that he is informed and believes and avers the fact to be that large quantities of lumber and other materials and merchandise belonging to the receivers were used by the petitioners without the consent of the receivers in the construction of the drug-store building to the value of about one thousand dollars, an itemized account of which respondent cannot furnish, because not within his knowledge, and he asks that petitioners be required to disclose the quantities and values of such lumber and material, and that the values of same be charged to petitioners.

7th. And respondent further says that petitioners are indebted to the receivers for labor done, goods, wares and merchandise furnished them and freights due and paid on them at the special instance and request of the petitioners in the sum of $3,216.66 *dollars*, the particulars of which will more fully appear by the account herewith filed, marked "Exhibit A," which is made a part of this answer; that the prices and amounts therein charged are the reasonable values of the work done and articles furnished and of the amounts of freight due and paid, none of which have been paid for, and none of which are included in the credits given by the petitioners in their account; and respondent pleads the same as a counter-claim and offset, and asks judgment therefor, and that the amount thereof be deducted from whatever sum may be found due the petitioners.

8th. And respondent further says the petitioners have given the following orders on the receivers to be paid out of the amounts due them, to wit:

To the Grady Trading Company, two orders amounting to	$2,446 30
To J. J. McAlester	509 90
To H. W. Robinson	240 53
And to the National Bank of Denison	7,410 00

9th. The respondent further says that all the work done and materials furnished by petitioners on any property in the hands of the receivers as described in the complaint has been fully paid for

and the only amounts claimed to be due are for work and material on the Kali-Inla hotel and the drug store, and the petitioners are in no event entitled to a lien on any other property; that the respondent makes no claim to the drug store, has never claimed, received or accepted the same, and for that reason will not resist the prayer for a lien thereon, but he says petitioners' complaint does not show them to be entitled to a lien on the Kali-Inla hotel, and if petitioners are given a lien on the drug store and hall the receivers should have a lien prior to theirs for the value of the lumber and other articles and materials belonging to the receivers and
28 used by the petitioners in the construction of said house and premises illegally and without the consent of the receivers.

FRANCIS I. GOWEN,
Acting Receiver,
By S. A. GILBERT,
His Attorney.

S. A. Gilbert, being duly sworn, on his oath says he is the attorney of Francis I. Gowen, acting receiver, that said Gowen is absent from the Indian Territory and that the above answer and the matters therein stated are true to the best of the knowledge and belief of affiant.

S. A. GILBERT.

Subscribed and sworn to before me this 24th day of October, 1891, at the town of South McAlester, Choctaw nation, Indian Territory.

ALLEN R. BOYD,
Notary Public.

Be it further remembered that on the 24th day of October, 1891, at the hearing before said master the Girard Life Insurance, Annuity and Trust Company of Philadelphia, trustee, filed their answer to the complaint of said Cooper & Son, which answer is as follows:

In the United States Court in the Indian Territory.

In the Matter of the Account of W. H. COOPER & SON.

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

Comes now the Girard Life Insurance, Annuity & Trust Co. of Philadelphia, and for its answer and defence to the motion, petition and claim of W. H. Cooper & Son against the receivers of the Choctaw Coal & Railway Company alleges and says:

1st. That it is the trustee in the mortgages created by the Choctaw Coal & Railway Company to secure the several issues of bonds; that said mortgages and the bonds secured thereby are as follows:

A mortgage dated January 14th, 1890, upon certain coal mines and properties of said company to secure bonds of said company to the amount of $500,000, all of which have been issued.

A mortgage dated January 15th, 1890, upon certain mines and the entire present and future road-bed and railway of said company to the amount of $10,000,000, under which bonds have been issued to the amount of $1,400,000.00.

29 A mortgage dated December 1st, 1890, to secure the bonds of the said company to the amount of $1,000,000, under which bonds have been issued to the amount of $1,000,000.

That this respondent is the trustee for all of said bonds and the holders thereof and is authorized to act for them and appears in this action for itself and for all of the holders of said bonds, and the Philadelphia holders of receivers' certificates, and is therefore interested in this hearing.

That this respondent and other bondholders who act in concert with it have purchased receivers' certificates of said company to the amount of about $350,000, and have recently advanced large sums of money to the acting receiver of said company on open account to enable them to pay their pay-rolls and the royalties under the leases to save said leases from forfeiture, and has made further advances to make the payments of cash provided for in the order of this court, made October 13th, 1891, to L. M. Dunn, W. J. Echols & Co. and James Foster, and has agreed and bound itself to furnish the acting receiver of said company the necessary cash to comply with all of the conditions of said order of October 13th, 1891.

Further answering, this respondent says that it has not sufficient knowledge to form a belief as to the correctness of any of the items of the account set forth in the petition and claim of said W. H. Cooper & Son, and therefore denies all said account and claims and demands that said petitioners be required to establish every item of said account, which may here be allowed, by clear and satisfactory proof.

Further answering, this respondent says that the work charged in the account of said petitioners as having been done on the Kali-Inla hotel, to wit, item of May 9th, 1891, "Labor performed in construction of Kali-Inla hotel, $11,182.97;" and that of May and June, 1890, "Labor performed on the same building, $3,287.69," were all done and performed and said indebtedness incurred after the appointment of the receivers of said company, and this respondent alleges and says that the expenditures of said money and the performance of said labor and the incurring of said indebtedness was not necessary for the preservation of the property and the prosecution of the business intrusted by the court to the care and keeping of said receivers of said company, and was not a proper and legitimate use of the trust funds confided to the hands of the said receivers by the court, but on the contrary was an improvident use of said trust and a profligate waste of the money and property confided by the court to the hands of said receivers. That no petition was ever filed with the court by said receivers or either of them, asking for an order of court authorizing said work to be done and said money expended, and no order of court therefor was ever made or issued, and no authority was ever given for the perform-

30 ing of said labor and the expenditure of said money, or for

incurring said indebtedness, and no contract was ever made by said receivers therefor, and all of said work has been done without authority of court, and is, therefore, illegal, and said receivers should not be allowed to pay for the same out of the trust funds in their hands.

This respondent further denies that said receivers, or either of them, ever made a contract on the 7th of July, 1891, or at any other time with the petitioners by which they, or either of them, agreed to pay said petitioners $10,250 for work and material on said Kali-Inla hotel, as alleged by the petitioners.

Further answering, this respondent says that as to the charge of $3,203.19 for the drug store and hall, that said building was constructed after the appointment of said receivers and that no petition was ever filed with the court by said receivers, or either of them, for authority to construct said building, and no order of court authorizing the same to be constructed was ever made and issued by the court, and no authority whatever ever given by the court for the construction of the same, and no contract was ever made by said receivers or either of them for the construction of said building, and the same was done wholly without authority, and therefore cannot be charged against the trust estate in the hands of said receivers; that said building was constructed by said Cooper & Son without the knowledge of the court or the special master or of Receiver Gowen, and said building was not constructed for the use of said company or of the receivers or any of the employés of said company or the said receivers, and was not done for the benefit of the trust in the hands of the said receivers, and has never been used by said company or said receivers, and has never been accepted or occupied by them in any way; that when said Cooper & Son were constructing said building they knew that the same was being done without authority of the court and without the knowledge of the court, and said Cooper & Son represented and held out to the public during all the time they were constructing said building that the same was being built as a drug store and hall for the use and benefit and as the property of Doctor J. T. Lowrey, a resident of South McAlester, Indian Territory; and said building was constructed for a drug store and hall for said Lowrey, and to allow said claim would be a profligate waste of money and an improper use and diversion of the trust in the hands of said receivers.

Further answering, this respondent says that nearly all of said indebtedness of $31,913.09, claimed by the petitioners, with the exception of the amount claimed for said drug store and hall, is charged for work done and material furnished on said Kali-Inla Hotel building, which has cost, up to the present time, upwards of $60,000, and is still incomplete and almost entirely unfit for use; that there are no flues or chimneys in said building, and no provision for the heating of said building in any way; that the two upper
31 stories of said building are entirely unfinished, and the whole interior of the two lower stories is entirely unfinished; that said building is cut up into small rooms and has been poorly constructed and will require the expenditure of many thousands of

dollars to make the same habitable or to put it in a condition where it will be of much use; that there has been a most extravagant waste of money and material in the construction of said building thus far, and the same appears to have been built with a view of consuming material and costing money instead of with a view of being serviceable and useful; that said building is 100 feet by 160 feet and four stories high, and the arrangement of it is very impracticable, and the whole interior of said building is almost absolutely worthless for the reason that the same is not and cannot be lighted so as to enable any one to live in it or transact any business therein; that said building and said drug store are erected upon land to which neither said company or said receivers have any title, but said building was erected on said land by Edwin D. Chadick, agent for Fritz Sittel, a citizen of the Choctaw nation, and said land was supposed to belong to said Sittel as an Indian citizen, but the supreme court of said Choctaw nation has since decided that the right, title and ownership of said land was in one Henry Trauth, and that said Sittel has no right to the same.

This respondent therefore prays that the petition and claim of said Cooper & Son be dismissed as against the receivers of said company, or if any amount be found due said Cooper & Son on any of the accounts or items of their petition, that the same may be made a general claim against the Choctaw Coal & Railway Company and be postponed and made subordinate to the claim of this respondent under the bonds and receivers' certificates of said company, and that no amount of the claim of said Cooper & Son be paid until after the bonds and receivers' certificates of said company are paid, and that the petitioners pay the cost of this proceeding.

GIRARD LIFE INSURANCE, ANNUITY & TRUST COMPANY OF PHILADELPHIA,
By SAMUEL DICKSON.
WAYNE McVEIGH AND
J. W. McLOUD, *Attorneys.*

J. W. McLoud, being first duly sworn, deposes and says that in this hearing he is appearing for the Girard Life Insurance, Annuity & Trust Company of Philadelphia, trustee; that the same is a corporation and affiant has read the above answer and knows the contents thereof and he says that the same is true as he verily believes.

J. W. McLOUD.

32 Subscribed and sworn to before me this 24th day of October, A. D. 1891, at the town of South McAlester, Choctaw nation, Indian Territory.

ALLEN R. BOYD,
Notary Public.

Be it further remembered that on the 24th day of October, 1891, at the hearing before said master, Edwin D. Chadick filed his answer or affidavit to the complaint of said Cooper & Son, which answer is as follows:

Affidavit of E. D. Chadick.

In Matter of Motion of W. H. Cooper & Son.

Langhorne Wister, Plaintiff,
vs.
C. C. & R'y Co., Defendants.

E. D. Chadick, having been duly sworn, comes and deposeth as follows, viz:

When board of directors of C. C. & R'y Co. was organized I was appointed general manager with large discretionary powers. During the progress of the work it became apparent that buildings must be erected for our employés at South McAlester and elsewhere. I notified Mr. Alderson, the treasurer of the company, that we must expend the money for this work. He ratified my plans fully and subsequently, when I paid Messrs. W. H. Cooper & Son checks for work from time to time, I sent in reports of the work done and he approved the checks with a full knowledge of the purposes for which they were expended.

When Congress decided to establish the U. S. court here we promised to erect a suitable and substantial building for the court and officers' quarters; we also decided to erect a building for a bank and hotel, which would be convenient to both railways. With the full consent of the Philadelphia officials, they interposing no objections, I decided to build what is now known as the Kali-Inla hotel.

On May 23rd, 1890, I entered into a contract with W. H. Cooper & Son to do the work at prices set forth in the specifications annexed thereto.

In all work I had done the contracts were executed between W. H. Cooper & Son and E. D. Chadick, manager. W. H. Cox was supervising architect and was on the pay-roll as assistant engineer. All specifications and contracts were drawn by him, and signed by him for me on behalf of the company. The Kali-Inla Hotel contract was drawn and executed in the same manner and under the same authority as all other contracts for building for the company, — which Messrs. W. H. Cooper & Son have long since been paid.

33 When the contract with W. H. Cooper & Son was signed the first story of the rock wall had been erected by company workmen under the supervision of Mr. W. H. Cory.

At the time the company went into the hands of receivers there was due W. H. Cooper & Son, as near as I can now recollect, about $16,000, of which about one-half was for work done on the Kali-Inla hotel. By order of the court the sum of $500,000 in receivers' certificates were issued and the creditors of the road were paid one-half in cash from sale of said certificates and one-half in said certificates. W. H. Cooper & Son were paid, as other creditors, their claim in full.

W. H. Cooper & Son proceeded with their work after the appointment of receivers. From time to time the work of the contractors on the hotel was checked up and estimates made and approved.

Messrs. W. H. Cooper & Son's vouchers show these several estimates up to June 3rd, 1891. Upon that day the receivers notified Messrs. Cooper & Son to close their work to date and estimates were accordingly made to that time. Cooper & Son were directed to make a bid in gross for all remaining work as per specifications. They did so and were awarded a contract for $10,250. This contract was drawn between the said W. H. Cooper & Son and E. D. Chadick and Francis I. Gowen, receivers, being drawn and signed by H. W. Cox, supervising architect, as other contracts were.

Subsequently additional work was done which amounted in all to $842.74. This work was done under the supervision of H. W. Cox, supervising architect, and as far as done has been approved by him.

All work done by W. H. Cooper & Son upon the Kali-Inla hotel was done by them either upon contract with me or by my directions, and the work so far as it has come under my notice has been well *and* done and at reasonable prices.

Doctor J. T. Lowrey decided to build a drug store, and being very anxious to have the corner back of the hotel occupied to prevent its being looted as block 47 had been I encouraged him in doing so. He got Mr. Cox to draw his plans and specifications and made a contract for the construction of the building with W. H. Cooper & Son. They were unwilling to carry Lowrey for the work and the lumber, and for reasons above specified I guaranteed for the company to furnish the necessary lumber. After the building had been partially completed I found that Lowrey would be unable to pay for the contract, so to save our lumber I decided to complete the building and we would pay for the same. This was done from necessity to save our lumber, and has proved to be the best-paying investment the company has made here.

34 Messrs. Cooper & Son did the work as they had contracted to do; they did it well and by my authority, and since its completion the company, as I am informed, has collected and used the rents arising from it, and are still doing so.

E. D. CHADICK.

Subscribed and sworn to before me this nineteenth (19th) day of October, 1891.

No. J. L. S. Gemmill.

[SEAL.]

J. L. S. GEMMILL,
U. S. Commissioner.

Be it further remembered that on the 19th day of January, 1892, in open court, Francis I. Gowen, acting receiver of the Choctaw Coal & Railway Company, filed his supplementary answer to the complaint of W. H. Cooper & Son, which supplementary answer is as follows:

In the United States Court in the Indian Territory.

In the Matter of the Motion W. H. COOPER & SON.

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

Now comes the defendant, Francis I. Gowen, acting receiver, and asks permission to file this, his supplementary answer, and says:

That the complainants, W. H. Cooper & Son, are indebted to the receivers herein in the sum of $4,136.36 not hitherto charged them, for freight and charges paid for them, labor and supplies furnished them, and for lumber sold them, and for overpayment on voucher # 193, $200.

That all of said items of indebtedness have been furnished to said Cooper & Son since the hearing before the master herein, except that of overpayment on voucher # 193, $200; bill # 376, for labor and material, $6.16 and the two last items in the account herewith filed of $56.25 and $35.05, which items were omitted by mistake in former accounts rendered and submitted to the master.

That all of said items were furnished to said Cooper & Son at their instance and request and were worth the price charged in the account hereto annexed, to which reference is made for particulars and dates; and said acting receiver asks that he have judgment against said Cooper & Son for said amount of $4,136.36, and that he have credit therefor on final settlement with said Cooper & Son; and the said account is herewith filed and made a part of this answer.

S. A. GILBERT,
Att'y for Receiver.

35 Be it further remembered that on the 14th day of December, 1891, said Cooper & Son, by their attorneys, in open court, filed a motion to strike from the records the exceptions of Francis I. Gowen, acting receiver, to the report of the special master, which motion is as follows:

In the United States Court in the Indian Territory, Second Judicial Division.

In the Matter of W. H. COOPER & SON.

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

Come now W. H. Cooper & Son, by their attorneys, and move the court to strike out from the record and suppress the exceptions to the report of the special master filed by the acting receiver of the Choctaw Coal & Railway Company, and for such motion and in support thereof, respectfully refer to the order of this honorable court, a copy of which is hereto attached and made a part hereof, whereby it doth appear that the report of the special master is con-

clusive upon the facts involved herein and binding upon said receiver.

Whereof said Cooper & Son pray judgment, etc.

L. H. SANDELS,
A. G. MOSELEY,
Att'ys for Cooper & Son.

To the above motion was attached a copy of the order made at Ardmore, October 13th, 1891, but is omitted here by agreement of counsel because set out in full on page 92 of the bill of exceptions, to which reference is here made.

Be it further remembered that on the same date said Cooper & Son filed their motion to strike from the record the exceptions of the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, to the report of the special master, which motion is as follows:

In the United States Court in the Indian Territory, Second Judicial Division.

In Matter of W. H. COOPER & SON.

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

Come now W. H. Cooper & Son, by their attorneys, and move the court to strike out from the record the exceptions to the master's report filed by the Girard Life Insurance Annuity & Trust
36 Company of Philadelphia, for the reason that said company is not a party to this proceeding, and has no interest herein, and further because said company, if permitted to make itself a party to this proceeding, is bound by the former orders of this honorable court made herein.

Whereof they pray judgment.

L. P. SANDELS.
A. G. MOSELEY.

Be it further remembered, that on the 19th day of January, 1892, the court in open court sustained said motions and rendered judgment thereon as follows:

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

On this day, in open court, comes on to be heard the motion heretofore filed in this cause to strike from the files the exceptions to report of special master in matter of claim of W. H. Cooper & Son against Edwin D. Chadick and Francis I. Gowen, receivers, and also the motion for judgment upon report of special master.

And it appearing to the court that heretofore in chambers at Ardmore, I. T., the petition of Paul Waples and others was heard and determined, and that in the order there made October 13th, 1891, the court upon the evidence then adduced recognized and declared the validity of the claim of said W. H. Cooper & Son; and that it being stated by receivers that they were entitled to certain credits upon said account, the court referred the said claim to the special master, with instructions to ascertain the amount due upon said claim, the validity of which had been adjudged by the court, and further ordered that the receivers, when the master should determine the amount, should pay to said W. H. Cooper & Son in cash one-third of the amount so found by the master to be due, one-third in receivers' certificates and one-third in lumber at market value; it is, therefore, ordered that the motion to strike from the files the exceptions heretofore filed on behalf of Francis I. Gowen, acting receiver, and the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, be sustained, and the motion for judgment upon the master's report be granted.

And it appearing from the report of the master made November 16th, 1891, that there was due by said receivers to W. H. Cooper & Son for work done and materials furnished in construction of Kali-Inla hotel the sum of $14,749.45 on October 13th, 1891.

It is therefore ordered, adjudged and decreed that W. H. Cooper & Son do have and recover of and from Edwin D. Chadick and Francis I. Gowen, receivers of the Choctaw Coal & Railway Company the sum of $14,749.45, together with all costs herein
37 expended, and that said judgment bear interest from November 16th, 1891, at the rate of 6% per annum until paid.

And it is further ordered that said judgment be satisfied in obedience to the order of the court heretofore made at Ardmore October 13th, 1891, on or before February 15th, 1892, to which judgment, order and decree the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, of the bondholders of the Choctaw Coal & Railway Company, and Francis I. Gowen, acting receiver of the Choctaw Coal & Railway Company, do hereby *accept*.

Be it further remembered, that on the 20th day of January, 1892, Francis I. Gowen, appellant herein, filed in open court his motion for a new trial or hearing of said cause, which motion is as follows:

In the United States Court in the Indian Territory.

LANGHORNE WISTER, Pl'ff,
vs.
CHOCTAW COAL & R'Y CO., Def't.

In the matter of the intervention and claim of W. H. Cooper & Son *vs.* The Receivers, E. D. Chadick and Francis I. Gowen.

Now comes the said receivers, Edwin D. Chadick and Francis I. Gowen, and move the court to set aside the judgment herein rendered, striking out the exceptions filed by said receivers to the

report of the special master and in favor of said intervenors, Cooper & Son, for the amount found due them by the special master and grant them a new hearing and trial thereon for the following reasons:

1st. The court erred in its construction of the order made herein at Ardmore of date October 13th and in holding that said order submitted the matter at issue to the special master and made his findings conclusive.

2nd. The court erred in the law and in sustaining said motion to strike out said exceptions and rendering said judgment.

3rd. The said receivers have had no opportunity to make their defense to said claim before the master or in this court, because the master refused to receive or consider this evidence, and the court held his findings conclusive and declined to review them by considering said exceptions.

4th. Because said judgment is against the evidence and the weight of the evidence.

S. A. GILBERT,
Att'y for the Receivers.

38 Be it further remembered that on the same day The Girard Life Insurance Annuity & Trust Company, appellant herein, filed its motion for a new trial or rehearing of said cause before said master and court, which motion is as follows:

In the United States Court in the Indian Territory.

LANGHORNE WISTER, Pl'ff,
vs.
CHOCTAW COAL & RAILWAY COMPANY, Defendant.

In the matter of the intervention and claim of W. H. Cooper & Son *vs.* Edwin D. Chadwick and Francis I. Gowen, receivers herein.

Now comes the Girard Life Insurance Annuity & Trust Company and moves the court to set aside the judgment herein rendered, striking out the exceptions to the report of the special master heretofore filed by said trust company, and in favor of said intervenors, Cooper & Son, for the amount found due them by the special master, and grant a new hearing and trial herein, for the following reasons:

1st. The court erred in its construction of the order made herein at Ardmore, October 13th, 1891, and in holding that said order submitted the matter at issue to the special master and made his findings conclusive.

2nd. The court erred in the law and in sustaining said motion to strike out said exceptions and rendering said judgment.

3rd. Because the said trust company has had no opportunity to make their defense to said claim before the master or in this court, because the master refused to receive or consider their evidence, and the court held his findings and actions conclusive and declined to remove them by considering said exceptions.

4th. Because said judgment is against the evidence and the weight of the evidence.

5th. Because the judgment of said court confirming the report of said master and rendering judgment thereon in favor of said Cooper & Son is contrary to law and evidence, and should be set aside for the reasons set forth in the exceptions of said Girard Trust Company hereto attached and made a part hereof.

J. W. McLOUD,
Att'y Girard Life Insurance, Annuity & Trust Company.

Be it further remembered that on the 29th day of January, 1892, the court in open court rendered judgment overruling said motions for a new trial or rehearing, and rendered judgment sustain-
39 ing and confirming said judgment of January 19th and making the same the final judgment or order of said court in said cause, which judgment is as follows:

In the United States Court in the Indian Territory. In Equity.

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

In the matter of the intervention and claim of W. H. Cooper & Son against the receivers of the Choctaw Coal & Railway Company.

This cause of W. H. Cooper & Son coming on to be heard in open court on this 29th day of January, 1892, upon the motions of Francis I. Gowen, acting receiver, and the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee of the bondholders of the Choctaw Coal & Railway Company, for a new trial in said cause of W. H. Cooper & Son, and the court being fully advised in the premises, doth overrule said motions and the judgment rendered in this cause on the 19th day of January, 1892, is hereby confirmed and made the final judgment of this court in said cause, to which the said Gowen and the said trust company duly excepted.

Be it further remembered that on the 30th day of January, 1892, The Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, appellant herein, filed in open court, its petition for an appeal from said orders of said court, dated respectively, January 19th and 29th, 1892, to the circuit court of appeals for the eighth circuit, sitting at the city of St. Louis, in the State of Missouri, which petition was on the same day granted by said court on condition that Francis I. Gowen, acting receiver of said Choctaw Coal & Railway Company be joined as one of the appellants, and that appellants give a supercedeas bond in the sum of $15,000 within ten days from said date, which order of court is as follows:

In the United States Court in the Indian Territory. In Equity.

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

In the matter of the appeal of the Girard Life Insurance Annuity & Trust Company and Francis I. Gowen, acting receiver of the Choctaw Coal & Railway Company.

This matter coming on to be heard in open court upon the petition of the Girard Life Insurance Annuity & Trust Company represented in open court by J. W. McLoud, attorney, to appeal
40 from the final order of this court of January 29th, 1892, in favor of W. H. Cooper & Son, represented in open court by G. A. Moseley and L. P. Sandels, attorneys, said appeal is hereby allowed in open court this 31st day of January, 1892, upon condition that Francis I. Gowen, acting receiver, join in said appeal for the receivers, and that said appellants give bond according to law in the sum of $15,000, with good and sufficient sureties to be approved by the court, said bond to be filed within 10 days from this date, and bill of exceptions in said appeal prepared within 10 days from this date, said judgment to be stayed for 10 days, and when said appeal bond is given, said bond to stay said judgment until said matter is finally disposed of, and said appellants by permission of the court file their assignment of errors in support of said appeal.

Be it further remembered that on the 27th day of February, 1892, the parties hereto submitted to said court their agreed bill of exceptions, which was on said date approved and allowed by said court, which bill of exceptions is as follows, extending from page 69 to page 150 inclusive.

Bill of Exceptions.

In the United States Court in the Indian Territory, Second Judicial Division.

THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY OF Philadelphia, Trustee, and Francis I. Gowen, Acting Receiver of the Choctaw Coal and Railway Company, Appellants,
vs.
W. H. COOPER & SON, Appellees.

In the Receivership Cause of LANGHORNE WISTER and The Girard Life Insurance, Annuity and Trust Company of Philadelphia, Trustee, Plaintiffs,
vs.
CHOCTAW COAL AND RAILWAY COMPANY, Defendant.

Be it remembered, that there-fore, to wit, on the 19th day of December, 1890, Langhorne Wister, a citizen of the State of Pennsylvania, in behalf of himself and other creditors of the Choctaw Coal

& Railway Company, filed his complaint in equity in the United States court in the Indian Territory, before Honorable James M. Shackelford, judge of said court, at chambers, against the Choctaw Coal & Railway Company, praying that a receiver of said company be appointed. The substance of said complaint in equity is as follows:

1st. That the plaintiff is a citizen of the State of Pennsylvania, and that the Choctaw Coal & Railway Company is a corporation duly organized and existing under the laws of the State of
41 Minnesota, but owning and operating under powers granted by the statutes of the United States a line of railway in the Indian Territory, the greater part of which with its coal mines is located in the Choctaw nation, Indian Territory, in the second judicial division of said court.

2nd. That said railway company owed the plaintiff the sum of $4,000, which was overdue and unpaid.

3rd. Describing the entire property of said railway company in the Indian Territory, and the value of it and the necessity for the appointment of a receiver.

4th. Describing the floating indebtedness of the company.

5th. Praying for the appointment of receivers.

On the same day the defendant railway company filed its answer, admitting all of the facts stated in the complaint and consenting to the appointment of the receivers.

On the same day said court granted the prayer of said complaint in equity, and made an order appointing Edwin D. Chadick, Alan H. Reed and Samuel L. Shellenberger, receivers of the said Choctaw Coal & Railway Company, which order of court is as follows:

In the United States Court for the Indian Territory.

Between LANGHORNE WISTER, a Citizen of the State of Pennsylvania, Plaintiff,
and
THE CHOCTAW COAL AND RAILWAY COMPANY, a Corporation Existing under the Laws of the State of Minnesota, Defendant.

Before me, James M. Shackelford, judge of the United States court for the Indian Territory, in chambers.

And now comes the plaintiff by counsel, and moves the court for the appointment of receivers herein to take possession, management and control of certain property of the defendant, and it appearing that the petition of the plaintiff has been duly filed with the clerk of said court, and that notice of said motion has been duly given to said defendant, and said defendant appearing by its counsel to said motion and admitting the truth of the facts stated in said petition, and the plaintiff filing the affidavit of William C. Alderson in support thereof, the said motion is sustained, and it is ordered, adjudged and decreed that Allen H. Reed, Edwin D. Chadick and Samuel L. Shellenberger be and they are hereby appointed receivers of all the

property, estate and franchises of the said The Choctaw Coal & Railway Company, of whatever kind and description and
42 wheresoever situated, including the coal leases, mines, mining machinery, railway track, road-bed, depots, rolling stock, telegraph lines, franchises, rights and privileges of the corporation defendant, and all assets and property, real, personal, and mixed of every kind and description; and the lands, tenements, goods, chattels, funds, assets, moneys, credits, choses in action, rights and interests of every kind, name and nature, either in law or equity, or any part thereof belonging to the same, shall be placed in the hands of said receivers to hold the same subject to the orders of the court made herein, and it is further ordered that the said receivers be and they are hereby authorized and instructed to carry on the business of a common carrier throughout the whole extent of the Choctaw Coal & Railway Company's line of railway, and for these purposes they are hereby authorized and empowered to manage, control and exercise all the franchises of the company, and they are hereby vested with the powers, duties and obligations of receivers of the court, subject to the rules of courts of equity, and the said receivers are hereby further authorized and directed to keep the mines and other property employed and used in the manner they have heretofore been used and employed so far as they shall deem it to be to the advantage of all parties interested and to extend and open the mines and to continue the mining operations of the said corporation defendant, and to sell and dispose of the coal already mined or to be mined, either for cash or on the usual credits, and out of the proceeds thereof to pay the wages, taxes, royalties, rents and freights; and it is further ordered that the said receivers shall keep full and accurate account of all their acts and doings as such receivers, and report the same from time to time as they may be directed, and they are hereby empowered and directed to employ such agents and attorneys as the corporation itself has hitherto done and they may find necessary in the proper conduct of the business; and the said receivers shall settle their accounts before the master to be appointed, on the first day of each month, or so soon thereafter as the same can be done; and it is further ordered that an injunction issue against the defendant and all persons claiming or acting by, through or under it and all other persons, to restrain them from interfering with said receivers in taking possession or managing the said property, with leave to any party in interest to apply for further directions; and it is further ordered that said receivers enter into a bond for one hundred thousand dollars ($100,000), payable to the United States, sureties to be approved by me, conditioned that they will well and truly perform the duties of their office and truly account for all money or property which may come to their hands, and abide by and perform all things which they shall be directed to do, and the said bonds shall be filed within fifteen days from date.

JAMES M. SHAKELFORD,
Judge United States Court for the Indian Territory.

43 That afterwards, to wit, on the 8th day of January, 1891, the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, made application to said court in open court at South McAlester, Indian Territory, second judicial division, to be allowed to intervene in said cause and file their complaint in equity as trustee of the bondholders of the Choctaw Coal & Railway Company, and asking to be made parties to said receivership cause, the substance of which complaint in equity is as follows:

1st. That under date of January 14th, 1890, the Choctaw Coal & Railway Company executed a mortgage to secure issue of bonds to the amount of $500,000, which mortgage is the first lien upon the property and coal mines of said company and had been duly recorded; that on the 15th day of January, 1890, said railway company had executed a mortgage to secure an issue of bonds to the amount of $10,000,000, which mortgage had been duly recorded and was to be a first lien upon the railway of said company. Said bonds to be issued at the rate of $20,000 per mile as fast as said railway was completed; that on the 1st day of December, 1890, said railway company made a further indenture or mortgage upon its railway and coal mines and other property, to secure an issue of bonds to the amount of $1,000,000, all of which mortgages were made to said The Girard Life Insurance Annuity & Trust Company of Philadelphia, as trustee.

2nd. That under the first of said mortgages, bonds to the amount of $500,000 were issued; that under the second of said mortgages, bonds to the amount of $1,400,000 were issued, and that under the third of said mortgages, bonds to the amount of $1,000,000 were issued; and that bonds issued under the said mortgage of January 15th, 1890, were pledged to secure in part certain indebtedness amounting to $1,500,000, some of which indebtedness is overdue and in default and the interest upon which, as well as upon the bonds securing the same, is unpaid and in default, and that complainant is entitled to the appointment of a receiver to enforce its rights as mortgagee and trustee, as stipulated and contained in said mortgages.

3rd. Recites the proceedings had under the complaint in equity of Langhorne Wister as above stated.

4th. The substance of the prayer of said complainant is as follows:

1. A decree that said mortgages are liens upon the property therein mentioned in the order of their priority.

2. That said trust company, as trustee, have leave to enter upon the mortgaged premises by its receiver, and to use, operate and work the same for the benefit of the holders of the bonds secured by said mortgages.

44 3d. That the rights of the holders of said bonds be ascertained and determined, and that said railway company be required to pay all moneys now and hereafter to become due thereon.

4. That in default thereof that said mortgaged property be sold under a decree of court to satisfy said mortgages, and that said rail-

way company and all persons claiming under it may be barred and foreclosed of all equity or redemption.

5. That complainant have general relief in equity.

On the same day the defendant, The Choctaw Coal & Railway Company, filed its answer admitting all of the allegations of said complainant in equity, and the receivers theretofore appointed having failed to qualify, the court made an order appointing and constituting Edwin D. Chadick and Francis I. Gowen, receivers of said Choctaw Coal & Railway Company, which order of court is as follows:

In the United States Court for the Indian Territory, Second Judicial Division.

LANGHORNE WISTER, a Citizen of the State of Pennsylvania, Plaintiff,
and the
CHOCTAW COAL & RAILWAY COMPANY, a Corporation of the State of Minnesota, Defendant.

And now, January 8th, 1891, this cause came on to be heard, in open court, W. M. Harrison appearing for the plaintiff, Langhorne Wister; George Tucker Pispham, Esq., appearing for the Girard Life Insurance Annuity Trust Company of Philadelphia, intervening under the order of court made this day, and Samuel Dickson, Esq. (with whom was the Honorable Wayne McVeagh), appearing for the bondholders secured by the mortgages of the Choctaw Coal & Railway Company to said Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, of January 14th, 1890; January 15th, 1890, and December 1st, 1890, and Honorable S. A. Gilbert appearing for the Choctaw Coal & Railway Company, defendant, and Clayton, Brizzolara, Forrester & Nelson, C. H. Trimble, Sandels & Hutchins, Sarlls & Haynes, counsel for Garvey Brothers, *et al.*, intervening petitioners, also appearing and consenting thereto.

And Samuel D. Shellenberger and Alan H. Reed, heretofore appointed receivers under the order of this court of December 19th, 1890, having declined to qualify and to act as such receivers, it is thereupon ordered, adjudged and decreed that Francis I. Gowen, Esq., of the city of Philadelphia be and is hereby appointed in their place and stead, and Edwin D. Chadick named in said order of December 19th, 1890, and the said Francis I. Gowen, now appointed be and they are hereby declared and constituted receivers of
45 the property, estate and franchises of the said Choctaw Coal & Railway Company, of whatever kind and description and wheresoever situated, including the entire railroad, the coal leases, mines, mining machinery, railway track, road-bed, depots, rolling stock, franchises, rights and privileges of the corporation defendant, and all assets and property, real, personal and mixed, of every kind and description, with all the power and authority conferred in and by the said original order of December 19th, 1890.

And it is further ordered that each of the said receivers give bond in the sum of fifty thousand dollars to be approved by this court, and that they pass their accounts monthly before William Nelson, Esq., clerk of this court, who is hereby appointed special commissioner and master, to audit, settle and adjust the same.

And the same day said receivers were duly qualified and gave bond as provided in said order, which was approved by the court.

And afterwards, to wit, on the 28th day of August, 1891, Edwin D. Chadick presented to said court at chambers his petition asking to be relieved of the duties of receiver for the period of one year, and that Francis I. Gowen be made the sole acting receiver for that time, which petition is as follows:

Petition of Edwin D. Chadick.

In the United States Court in the Indian Territory, Second Judicial Division.

LANGHORNE WISTER, Plaintiff,
vs.
CHOCTAW COAL & RAILWAY COMPANY, Defendant.

The petition of Edwin D. Chadick respectfully represents:

1st. That by order of your honorable court entered in January last in the cause of Langhorne Wister *vs.* The Choctaw Coal & Railway Company Francis I. Gowen and your petitioner were appointed receivers of all the property, franchises and assets of said company, and that they have since then been in possession of the property and discharging the duties of their office.

2nd. That owing to sundry circumstances which have recently occurred, in the opinion of your petitioner, it has become imperatively necessary for him to devote his entire time to conducting negotiations for the sale of the bonds and completion of the railroad upon the lines originally laid down.

3rd. To enable your petitioner to give the necessary time and attention to these matters which are of vital importance to all interested in preserving the integrity of the enterprise and the consequent development of the Indian Territory which will follow the
46 completion of the railroad, he has, after consultation with representatives of all classes of creditors and stockholders of the company who are now of record in the proceedings under which the present receivers were appointed, determined to pray your honorable court to grant him a leave of absence for one year, for the purpose of prosecuting the work as above indicated.

Your petitioner accordingly asks for a leave of absence as hereinbefore specified as receiver, and asks that an order in the form hereto annexed, be forthwith entered of record and he will ever pray, etc.

EDWIN D. CHADICK.

We approve the foregoing petition and ask that said order be made.

EFFINGHAM B. MORRIS,
J. DAVIS BRODHEAD, *Of Counsel.*
FRANCIS I. GOWEN, *Receiver.*

And on the same day the court granted the prayer of said petition, and made an order constituting Francis I. Gowen acting receiver for the period of one year, which order of court is as follows:

Decree.

In the United States Court in the Indian Territory, Second Judicial Division.

LANGHORNE WISTER, Plaintiff,
vs.
CHOCTAW COAL & RAILWAY COMPANY, Defendant.

And now, this 28th day of August, 1891, the petition of Edwin D. Chadick, one of the receivers of the Choctaw Coal & Railway Company, having been presented and considered and the same being assented to by counsel for creditors now present before me, and also by Francis I. Gowen, receiver, the prayer of the petition is hereby granted, and it is now ordered that Edwin D. Chadick is hereby granted leave of absence as receiver of said company for the purposes stated in said petition, for a period of one year from this date, and in the interim it is ordered that all powers and duties conferred on the receivers of said company under the orders of this court heretofore made shall forthwith be exercised by, and the same are hereby vested in, Francis I. Gowen, for the period named.

JAMES M. SHACKELFORD,
Judge U. S. Court.

47 II.

Be it further remembered that on the 30th day of September, 1891, there was served upon Francis I. Gowen, acting receiver of the Choctaw Coal & Railway Company, the following notice:

Notice.

In the United States Court for the Indian Territory, Second Division.

LANGHORNE WISTER
vs.
CHOCTAW COAL & RAILWAY COMPANY.

To Francis I. Gowen and Edwin D. Chadick, receivers in the above-entitled cause:

Take notice, that on the 7th day of October, 1891, the undersigned creditors of the Choctaw Coal & Railway Company will make

application to the United States court for the Indian Territory, in chambers at Ardmore, in the third division thereof, for the appointment of an additional or third receiver in this cause.

PAUL WAPLES,
As Receiver of the Choctaw Trading Co.
W. H. COOPER & SON,
By A. G. MOSELEY, *Their Attorney.*
L. M. DUNN,
By L. P. SANDELS, *His Attorney.*
W. J. ECHOLS & CO.,
By TABOR, HORTON & FULTZ,
Their Attorneys.

And on the same day there was filed with the clerk of said court the petition of Paul Waples and others, described in said notice, which petition is as follows:

Motion.

In the United States Court for the Indian Territory, Second Division.

LANGHORNE WISTER, Plaintiff,
vs.
CHOCTAW COAL & RAILWAY COMPANY, Defendant

Come now Paul Waples, as receiver of the Choctaw Trading Co.; W. J. Echols & Co., L. M. Dunn and W. H. Cooper & Son, — represent to the court—

48 That they are each creditors of the Choctaw Coal and Railway Co., as follows: There is due Paul Waples as such receiver, as aforesaid, the sum of about $25,000, which has been due and unpaid for more than ten months last past; there is due W. H. Cooper & Son the sum of $27,000, which is long since past due; there is due W. J. Echols & Co. the sum of $4.583.89, which is past due; there is due L. M. Dunn the sum of $5,250, which is past due. That all of said sums are for material furnished or labor performed in the construction of said railway and houses, and other appurtenances thereto.

That Francis I. Gowen is a resident of the city of Philadelphia, Pa.; that since the date of his appointment as receiver in this cause he has not been present at his office to attend to his duties except during short visits at long intervals. That it has been but unfrequently that both the receivers in this cause have been present at the same time, and very frequently that neither has been present; that Edwin D. Chadick, one of said receivers, is about to depart from the jurisdiction of this court upon an indefinite leave of absence; that the business of the said railway company has been neglected; that the mines and the railroad have not been operated so as to get the full earning capacity from the same; that said receivers do not work harmoniously, and the disagreements between them have resulted in general demoralization among their employés; that

the indebtedness of the railway company is increasing, and unless there be a general change in the policy and management of the road there seems to be no hope for the creditors to receive payment of their claims. That the property of the road will largely increase in value if completed to Oklahoma; that the receivers have wholly failed and refused to obey the orders of the court directing them to complete said road; that the petitioners are informed that the part of the road now built in Oklahoma has been attached by creditors, and your petitioners aver that if there be no change in the present management of the affairs of the road by the said receivers, that the court in Oklahoma will appoint receivers of the Western division of the road, which clash of jurisdiction will result in the material damage of the road, and that it appears to your petitioners absolutely essential to the preservation of the property and the payment of the existing indebtedness of the said railway company that there be a complete change in the present management thereof.

That your orators are informed and believed and aver the fact to be that the said Francis I. Gowen, who by recent order of this honorable court has been made sole managing receiver of said railway company is so intimately connected and under the influence and direction of the holders of the bonds of said railway company that the effect of his management and control is practically to place the property in the hands of the bondholders rather than in the hands of disinterested officers of the court.

49 They therefore pray that a third person familiar with the operation of the said railroad be appointed as additional receiver who will be present at headquarters of the said railway company, and who will have such powers as will result in the proper management of the property and interests, and to the relief of the creditors of the said Choctaw Coal & Railway Company.

PAUL WAPLES,
As Receiver of the Choctaw Trading Company.
W. H. COOPER & SON,
By A. G. MOSELEY, *Their Attorney.*
L. M. DUNN,
By SANDALL & HILL, *His Attorney-.*
W. J. ECHOLS & CO.,
By TABOR, HORTON & FOLTZ,
Their Attorneys.

And on the 7th day of October, 1891, Francis I. Gowen by his attorneys filed his answer to said petition of Paul Waples *et al.*, which answer of said Gowen is as follows:

In the United States Court in the Indian Territory.

In the Matter of the Petition of PAUL WAPLES, Receiver of the Choctaw Trading Company, and Others for the Appointment of an Additional Receiver.

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

And now comes Francis I. Gowen, one of the receivers of th- Choctaw Coal & Railway Company, and for answer to the averments and allegations contained in the petition of Paul Waples, receiver of the Choctaw Trading Company, and others, praying for the appointment of an additional receiver of the Choctaw Coal & Railway Company, says:

1st. It is true that the Choctaw Coal & Railway Company is indebted to Paul Waples, receiver of the Choctaw Trading Company, but the amount of said indebtedness, after deducting the amount of royalty due the Choctaw nation, as found by the master, is about $13.500. This indebtedness had been incurred by said Choctaw Coal & Railway Company prior to the appointment of the receivers (but the amount thereof was not definitely established until some three months ago), and it is in no sense due to the operations of the receivers. The indebtedness to said Waples, receiver, as aforesaid, was originally in excess of the sum named, and was about $55,000, but this has been reduced to the present figure by the delivery to him or on his account of $35,000 receivers' certificates, and the only reason why the said indebtedness has not been settled in full is because said Waples has declined to join with the receivers of the Choctaw Coal & Railway Company in asking for a further issue of certificates with which to settle his claim.

This respondent cannot at present say whether the amount stated in said petition as due to W. H. Cooper & Son is correct or not, as the report of the expert employed to measure the work done by said Cooper & Son upon the hotel building at South McAlester, the value of which work is understood constitutes the greater part of the claim, has not yet been received, but it will probably be found to be the case that the value of the work done by said Cooper & Son is in excess of the payments heretofore made them, but not, your respondent believes, the large sum stated in said petition. From this sum, whatever it may be, will have to be deducted the value of certain lumber sold to said W. H. Cooper & Son and of other material with which this respondent is informed and believes said receivers have been charged by W. H. Cooper & Son on account of said hotel building, and which were subsequently diverted and used by said W. H. Cooper & Son in another building which he was then erecting.

The receivers of the Choctaw Coal & Railway Company also hold certain assignments of W. H. Cooper & Son of the balance due them, aggregating $9,856.30.

In addition to the matters above mentioned affecting the claim of

the said W. H. Cooper & Son, there is the further question whether they have a valid claim against the receivers for that part of the work done upon the hotel building outside of that required to fit up the court-room and railroad offices and enclose the building, as all work outside of that just named was done without any order from this respondent, and the question of the liability of the trust estate in the hands of the receivers for the value of this unauthorized work is one which at the proper time this respondent intends to submit to your honorable court for determination.

That the amounts stated in said petition as due W. J. Echols & Co. and L. M. Dunn are believed to be correct, but it is not true that these claims are for labor or material furnished for and about the construction of the railway and houses or appurtenances thereto of the Choctaw Coal & Railway Company.

2nd. It is true that this respondent is a resident of the city of Philadelphia, and that he had not been continually present since his appointment as receiver at the office of the company in South McAlester, but it is a fact that about one-third of his time
51 since his appointment has been spent at said office and in traveling from one point to another for the purpose of attending to the business of said receivership. And in addition to the time thus consumed a large part of his time while in Philadelphia has been devoted to the business and affairs of said company.

This respondent presumes that the fact of his non-residence was considered by your honorable court at the time of his appointment, and that in view of the consideration that the office of said Choctaw Coal & Railway Company has been in the city of Philadelphia and that all of its head officers and all of its bondholders and creditors other than those whose claims were to be paid off by the issue of receivers' certificates provided for at that time resided therein, the appointment of a resident of that city was considered desirable.

This respondent also begs to call the attention of your honorable court to the fact that about two months ago, with the approval and sanction of your honorable court, the receivers appointed a manager, who has been continuously on duty at the office of the receivers, and has *has* discharged the duties of his position with entire satisfaction to the receivers and presumably to your honorable court.

3rd. This respondent denies the vague and indefinite allegations of said petition, that the business of said receivers has been neglected, and that the mines have not been operated so as to get the full earning capacity from the same, and prays that the petitioners may be required to specify the particulars in which said business has been neglected and the defect in the mode of operating the mines; as otherwise, save by a general denial as above, it is impossible to disprove said allegations.

It is true, as alleged in said petition, that the receivers did not agree in all respects as to the proper mode of conducting the operations of the road, and as to the propriety of certain expenditures, but all difficulty or embarrassment on this account has been re-

moved by the action of the receivers themselves in apportioning, with the concurrence and approval of your honorable court, the duties appertaining to their trust whereby the active management of the business of the company has for one year been vested in this respondent, while the work of endeavoring to raise the funds for the completion of the railroad of said Choctaw Coal & Railway Company as originally designed has been undertaken by Receiver Chadick.

This respondent denies that there is general or any demoralization among the employés of the road, but on the contrary he believes and avers that they are working together for the interests of the road; and he further denies that the indebtedness of the receivers is increasing. With reference to the time at which the pres-
52 ent obligations of the receivers can be retired this respondent is unable to speak with any assurance, as, unless through some reorganization of the company or its affairs and the consequent raising of a fund for the purpose of retiring such obligations, the only revenue available at present is that accruing from the operation of the mines and railroad; although it is true that since the consum-ation of the arrangement for the division of the duties of the receivers and in reliance upon it certain of the bondholders have advanced a considerable sum, which has been used in paying off arrears of wages and certain other pressing obligations.

4th. That this respondent agrees with the petitioners that the completion of the line into Oklahoma would be of great value to the property, but the receivers have been unable to secure the building of said line heretofore because of a lack of funds wherewith to pay for the same. That up to this time they have been unable to sell the certificates which by the order of your honorable court they were authorized to issue and dispose of for the purpose of completing said line into Oklahoma or to use the same in paying for the work and material that w-uld be required therefor. And it is wholly untrue as alleged in said petition that the receivers have refused to obey the orders of your honorable court in relation to the completion of said line. It is true that they have failed thus far to complete said line, but this has been due to their inability and not to their unwillingness. That the respondent cannot undertake to forecast the action of the court in Oklahoma Territory for which the petitioners assume to speak and can make no reply therefore to the allegations of said petition as to the future action of said court.

5th. That this respondent does not understand with what derilection of duty it is intended to charge him by the last paragraph of the petition, but he fully admits that he has been heretofore guided and controlled in his actions by the belief that it is the duty of a receiver to manage the trust so confided to him in such a manner as to ensure the best results for the creditors (whether bondholders or unsecured), and if it is intended in said paragraph to charge that a contrary course has been pursued, the respondent denies that such is the fact and he further denies that any such control as that

mentioned in said paragraph is exercised or attempted to be exercised on him.

All of which is respectfully represented.

FRANCIS I. GOWEN,
Acting Receiver Choctaw Coal & R'y Co.

Francis I. Gowen, being duly sworn, deposes and says that the facts and statements in the above instrument are true as he verily believes.

53 Witness my hand and seal of office, this 2nd day of October, A. D. 1891.

[SEAL.] ALLEN R. BOYD,
Notary Public for the Indian Territory.

Upon the trial of said petition of Paul Waples, receiver, and others, against Edwin D. Chadick and Francis I. Gowen, receivers, at chambers, at Ardmore, October 7th, 1891, W. H. Cooper testified briefly touching his claim, in support of said petition, which testimony by agreement of counsel is omitted from this bill of exceptions and reference is here made to his testimony before the master herein, said testimony fully covering that given by him at Ardmore.

Francis I. Gowen, being duly sworn on the 13th day of October, 1891, admitted that he had a conversation with W. H. Cooper, on the 29th day of August, 1891, but denied that said conversation was as stated by Mr. Cooper. His explanation at Ardmore of said conversation is by agreement of counsel omitted, because fully covered by his testimony before the master herein to which reference is here made.

Upon the 7th day of October, 1891, the testimony of the plaintiffs in the matter of the petition of Paul Waples and others against the receivers having been concluded, the court adjourned the hearing of this petition, upon motion of attorneys for Francis I. Gowen, until October 12th, 1891; and upon the 13th day of October, 1891, Receiver Francis I. Gowen, in person, and by his attorneys, and the Girard Life Insurance Annuity & Trust Company of Philadelphia, by Effingham B. Morris, its president, and its attorney, Samuel Dickson, Esq., appeared before the court in chambers and submitted to the court an order and stated to the court that they would consent to this order, which order was by the court, with a few modifications, adopted as follows:

In the United States Court in the Indian Territory.

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

And now, October 13th, 1891, the petition of Paul Waples, receiver, and others, and the answer of Francis I. Gowen, acting receiver, thereto having come on to be heard, the court having con-

sidered the same and being fully advised in the premises, it is ordered and decreed that the balance remaining due of the account heretofore found and reported by the master to be due to Paul Waples, receiver, be settled by the issue and delivery to said Paul Waples, receiver, of receivers' certificates bearing 7 % interest for the aforesaid amount at 95 % of their par value.

54 And that the claim of W. H. Cooper & Son be referred to the master to take testimony thereon and to ascertain the amount justly and equitably due as the true value of the work done and materials furnished by them upon and for the Kali-Inla Hotel building at South McAlester, and that receivers' certificates bearing 7 % interest be issued and delivered to them for one-third of the amount so found to be due, and to sell and deliver in settlement thereof lumber at the market price thereof for one-third of said amount, and the balance in cash to be borrowed on certificates as hereafter authorized.

And also that the acting receiver be authorized to borrow on the credit of the receivership and to issue receivers' certificates therefor, the amount due W. J. Echols & Co., L. M. Dunn and James Foster for the proceeds of lumber bought from them by the receivers.

It is further ordered that the acting receiver be and is hereby authorized and directed in case the rights of way through Oklahoma City and the lands adjacent thereto shall be renewed and confirmed, to enter forthwith into contract with responsible parties for the completion of the uncompleted portion between Fort Reno and Oklahoma City, with authority to use any materials on hand, including ties, rails or other materials of the company available therefor, such contract to be in the approved form of railroad contracts, and to be submitted to and approved by the court before execution, and to provide that the payments for the work done and materials furnished shall be made from time to time as the work shall progress, one-half in cash and one-half in receivers' certificates. It is further ordered that all of the certificates authorized by this order shall be of the form authorized by the order of January 8th, 1891, except that such certificates shall contain proper recitals and shall be a second lien, second to the previous issue of certificates upon the road heretofore constructed, and a first lien upon the roadway, stations and sidings hereafter to be constructed.

And the acting receiver is further authorized to sell so many of the said certificates at 95 per cent. of their par value as shall be necessary to provide the cash requisite to pay one-half of the cost of such construction and to pay the freight upon the ties, rails, and other materials to be transported to the place of construction.

And the acting receiver is also authorized to settle the accounts of A. N. Spencer and T. H. Howard, one-half in cash and one-half in said certificates for work already done on said construction upon the discontinuance by them of suits brought in Oklahoma Territory.

It is further ordered that all previous orders of the court, including that made August 28th, 1891, be and the same are hereby con-

firmed and approved and the executive duties of the re-
55 ceivership are to be discharged by Francis I. Gowen, acting receiver, under the orders and supervision of the court; and that Edwin D. Chadick shall devote his time and attention to the negotiation of the sale of the bonds for the completion of the road as indicated in his petition filed upon said 28th day of August, 1891, as directed by the order of said date granting the prayer of said petition.

It is further ordered that the relief, as prayed for in said petition of Paul Waples and others, filed September 30th, 1891, except as herein granted, be and the same is hereby denied.

III.

Be it further remembered that on the 8th day of October, 1891, W. H. Cooper & Son filed with the court at Ardmore at chambers their complaint in equity, with the exhibits thereto attached, upon which this action is based, which complaint is set out in full on page 2 of the transcript. No testimony was taken at Ardmore under said complaint, and by agreement of counsel entered into on the 13th day of October, 1891, the appellants were given 10 days in which to file their answers; and said hearing before the master upon said claim was set for October 24th, 1891, at South McAlester, at which time the complainants, W. H. Cooper & Son, appeared in person and by attorneys, A. G. Moseley, Esq., and L. P. Sandels, Esq., and Francis I. Gowen, acting receiver of the Choctaw Coal and Railway Company, appeared by Honorable S. A. Gilbert, his attorney, and filed his answer, which answer is set out in full on page 39 of the transcript; and the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, appeared by J. W. McLoud, Esq., its attorney, and filed its answer, which answer is set out in full on page 45 of the transcript; and Edwin D. Chadick, Esq., appeared in person and filed his answer, which is set out on page 51 of the transcript, to the filing of which answer the Girard Life Insurance Annuity & Trust Company filed a written objection, which is as follows, and which was overruled by the master, to which ruling said Girard Life Insurance Annuity & Trust Company of Philadelphia excepted.

Hearing Before the Master.

In the United States District Court in the Indian Territory.

LANGHORNE WISTER *et al.*
vs.
CHOCTAW COAL & RAILWAY COMPANY.

In the matter of the account of W. H. Cooper & Son.

Comes now the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee of the bondholders of the Choctaw Coal & Railway Company, and objects to the court allowing Edwin D.

Chadick, Esq., to file an answer in this hearing and cause
56 as receiver or otherwise, for the reason that he is not a party to said cause and has no interest therein, and has no authority or power as receiver to file an answer herein or to bind the receivership in any way, all such authority being vested solely in Francis I. Gowen under the orders of this court of August 28th, 1891, and October 13th, 1891.

J. W. McLOUD, *Attorney.*

Said complaint in equity of W. H. Cooper & Son above mentioned is filed in the receivership cause of Langhorne Wister *et al. vs.* The Choctaw Coal & Railway Company, and all of the pleadings and proceedings in said matter were had under said cause on the equity side of the court.

Said cause then proceeded to trial before the master.

Testimony Before Master.

By agreement of counsel all testimony and exhibits, except those relating to the Kali-Inla Hotel building, are omitted from this bill of exceptions and the transcript, except Exhibit A, which — attached to and described in the complaint of W. H. Cooper & Son, and is a statement of the whole amount sued for by them and credits.

W. H. COOPER, being duly sworn, says:

My name is W. H. Cooper; am a member of the firm of W. H. Cooper & Son, composed of W. H. Cooper and my oldest son, J. W. Cooper, plaintiffs in this action; our firm performed the work specified in Exhibit A, which is printed in full on page 10 of the transcript.

Plaintiffs here exhibit in evidence duplicate voucher and account, attached of April, 1891, signed by S. L. Shellenberger, assistant manager and chief engineer, $1,152.73, accepted accounts which voucher and account marked Exhibit B is copied in full on page 24 of the transcript.

The signature to Exhibit B is Major Shellenberger's. Major Shellenberger at the time he signed this held the position of chief engineer and assistant general manager.

Plaintiff- here offers in evidence duplicate voucher of May 9th, 1891, signed by S. L. Shellenberger, chief engineer and assistant manager, for the sum of $11,182.97 with estimates attached, which voucher is marked Exhibit C, and is copied in full on page 25 of the transcript.

At the time receivers were appointed for the Choctaw Coal & Railway Company the railway owed me money upon the Kali-Inla hotel. A complete settlement for all amounts prior to the time of
57 their appointments was had between me and the receivers, which was paid one-half in cash and one-half in receivers' certificates. All work done by me as evidenced by these several vouchers, was done since the appointment of the receivers.

Plaintiffs here offer in evidence duplicate voucher dated May and June, 1891, for the sum of $3,287.69, signed by S. L. Shellenberger, chief engineer and assistant manager, with estimates attached, which is marked Exhibit "D," and is copied in full on page 26 of the transcript.

Except the credits set forth in my account attached to this motion the receivers have paid me nothing upon these several vouchers. Upon June 3rd, 1891, I received a notice signed by Francis I. Gowen, and Edwin D. Chadick notifying me to close work upon the hotel at that time and make up my estimate what was due me to that date including June 3rd, which letter is as follows:

SOUTH MCALESTER, IND. TER., *June 3rd*, 1891.

Messrs. W. H. Cooper & Son, South McAlester, Indian Territory.

GENTLEMEN: Under direction of the court we notify you to stop all work on the Kali-Inla hotel from this date and make out your bill for the work done up to and including today.

We will then furnish you with designs and directions as to the work to be done and you will name a gross sum for the performance of the same which we will submit to the court for their approval or disapproval.

Yours truly,

EDWIN D. CHADICK,
FRANCIS I. GOWEN,
Receivers Choctaw Coal & R'y —.

Upon receipt of this letter I stopped work and Mr. Cox checked up work just as he had prior to all this work and an estimate was given and voucher, which is Exhibit D. I did no further work upon the hotel until the 7th day of July following. I got the plans of the hotel which you have read here, for this court-room, which Mr. Cox had drawn and I made an estimate and gross sum for completing this court work and the work on the other side over there for the railroad offices, completing those, for a gross sum, $10,250. Mr. Chadick said to me to make a gross sum for finishing the court and those rooms connected with the court here and doing this work
58 on the east side for the bank and treasury department and auditor's department and those offices above, and furnish material. I made a gross sum and furnished material to complete the work from that time, according to the plans and specifications. He accepted it and told me to go to work, which I did, and I cannot recall to mind what day after that, but a day or two after that, Major Nelson came down from Muscogee and Mr. Chadick had gone away at this time, and I told Major Nelson that I had an order from Mr. Chadick to go to work, a verbal order, and if that was correct; and I did not know whether it was proper to have a drawn order or verbal order, and I asked him and he told me I will give you an order now myself. I will give you an order to go ahead on this work, which he did, and I went ahead and completed the work according to the contract, plans and specifications furnished me by Mr. Cox and attached hereto and marked Exhibit E. The signature to this specification is that of Mr. H. W. Cox.

The exhibits referred to as Exhibit E *are* here introduced in evidence by plaintiff-, which exhibit is copied in full on page 11 of the transcript.

Judge GILBERT: If the court please, we object to the introduction of this pretended contract in evidence, or its consideration as a contract, for several reasons: 1st, that it is not signed by the parties who purport to be making the contract; there are no signatures whatever, as I understand. 2nd, that it is not a contract that was ever approved by the court, nor has it ever been presented to the court for its approval, and was never authorized to be made by the court.

The MASTER: I will say that there were plans submitted to the court; plans submitted by me to the court; sent by the architect up to Muscogee and submitted to the court, and if this contract is for finishing the work according to the plans submitted to the court and approved by the court then I shall admit it. If this contract is based upon the plans as submitted to the court then I shall admit it.

To the ruling of the master admitting this contract, Exhibit E, Francis I. Gowen, acting receiver, and Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, excepts.

I completed the portion of the building specified in the specifications according to the plans and for the amount charged therefor in the contract. Exhibit F is a statement showing material furnished and labor performed in building the Kali-Inla Hotel building and the United States court and the Choctaw Coal & Railway Company offices as per contract with the receivers, dated July 7th, 1891, as follows: The amount of the contract is $10.637.88, and the whole amount of the account, however, is $11,092.74. The first charge in the account is $10,250, and that is the amount named in the contract for building this court. The balance is for changes and work
that was done over and above the contract. The price for the
59 extra work and for material actually furnished was reasonable
and was submitted to the supervising architect and bears his signature, as follows: "I hereby certify that the foregoing is correct. H. W. Cox, supervising architect." This account covers my whole claim for work done upon the hotel after June 3rd.

Said Exhibit F here introduced is set out in full on page 27 of the transcript.

I commenced work on the Kali-Inla hotel in May, 1890, and at the time the receivers were appointed the stone-work was completed and we had the mansard stories up and lined on the inside and sheeted on the outside. It was not enclosed or the windows in; merely a frame enclosed in sheeting. I did that work under a contract with the railway company which is hereto attached and marked Exhibit G, which contract is signed by Mr. Cox and myself, a copy of which is set out on page 29 of the transcript.

Judge GILBERT: We object to that for the same reason that we did to the other. It does not appear to be signed by the railway company or any officer of the railway company or any one authorized to sign for them. We object to it for that reason. Further, because it appears to be a contract with the railway company before the receivers were appointed.

Mr. MOSELEY: If the court please, it is not for the purpose to bind the receivers. The evidence all shows that all money due on that contract was paid at the time of the appointment of the receivers, and I just want to introduce that contract to show the identity of the parties continuing the work afterwards.

The MASTER: If you show that this work after the appointment of the receivers up to June 3rd was done under the contract of May, 1890, I will admit it.

Mr. COOPER: I worked under the contract with the railroad from May, 1890, to June 3rd, 1891.

The MASTER: The contract of May, 1890, is admitted in evidence.

To which ruling Francis I. Gowen, acting receiver, and the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, excepts.

My work under the contract of May, 1890, was inspected by both of the receivers. Mr. Chadick was frequently here, through the building and over it. Mr. Gowen was here one time. Mr. Ashbridge, treasurer of the receivers, desired to have a change made in the stairway coming to the office on the other side of the building and suggested that I change it from the front to the side. I told him to see Mr. Cox, and if he saw fit to make the change it would be all right with me. He asked me then not to do any more work on the stairway until Mr. Chadick or Mr. Gowen came. They both came in a few days after that. I quitted work and waited
60 until they came and the change was made. Mr. Gowen at the time the change was made came down looking over the work, complimenting me on the building and the work generally, and asked me how long I thought it would take me to get these rooms completed so they could move from the depot. I told him if we could get dry lumber sufficient it would take but a short time, and he went on to say that it was a horrible place there, all cramped up and he wished I would push the work as fast as possible. I think this was prior to June 3rd. On Saturday, August 29th, before court commenced here on the first Tuesday in September, Mr. Gowen and I had a conversation in reference to the delivery of the possession of the hotel. I had this court-room and the court offices completed. I had been told that there was going to be a change in the administration here and that Mr. Gowen was going to take charge as managing receiver and I did not know just how the thing would result, and did not feel like turning the building over until I had some assurance of my money, and I locked the doors of these offices here and telegraphed up to Muscogee I was holding the building, and Mr. Chadick wired back that Mr. Gowen would be down in the morning, at least Mr. McLoud told me so. Mr. Gowen came down

Saturday morning. I was here at work with the men; he walked in here where I was and said he would like to see me in his office in about a half hour. I went up to his office and waited about thirty minutes before he got round to me, and he took me into his office there, the treasurer's office, and he told me that he had not had time to look the matter up, not up to that time, and he had this man Wood on his hands then, and there was quite a good deal of evidence that he had to get for Mr. Wood in order to make proper report to Philadelphia, I believe, and it would be impossible, he said, for him to shape me up that day, but on the Monday following he said he would take my matter up and shape me up all right; and that did not satisfy me exactly, and Mr. McLoud saw I hesitated a little, and Mr. Gowen called to Mr. McLoud, "Here is Mr. McLoud here, and I will just make a statement in his presence that your interests in this thing shall be guarded and I shall take your matter up Monday and fix you; and Mr. McLoud told me he thought I could rely fully on Mr. Gowen's word, and when he said that Mr. Gowen then stated, I do not talk personally or individually; or something like that; I talk as a receiver; I am managing affairs here now, or have charge of them; and says, I talk officially; that is what he said and assured me; so did Mr. McLoud; he told me that Monday he would take my matter up and fix me up all satisfactorily, and I told him that was all I wanted. He also stated to me about this Mr. Wood's report, which he said he was satisfied that it would be favorable; that those Philadelphia people would put up the money, he thought, and pay all these debts, and that it would only be the matter of a very few days when I would have my money, and that was all that was said at that time.

61 Plaintiff here exhibits a voucher dated February, 1891, for $4,886.62, and says: This was for work done by me on the Kali-Inla hotel under contract of May, 1890, and was paid for by the receivers. I do not know that this voucher was ever submitted to Mr. Gowen; the auditor stated to me that it was. It was paid by the receivers; Mr. Gowen, I think.

Voucher here referred to is attached as Exhibit H and is set out in full on page 38 of the transcript.

Cross-examination of W. H. COOPER:

Judge S. A. GILBERT: Mr. Cooper, did you keep a regular set of books in your business?

Mr. COOPER: Yes, sir.

Judge GILBERT: In which you showed all your expenditures for labor and material?

Mr. COOPER: Yes, sir.

Judge GILBERT: Can you tell me how much you paid out for labor from the first day of May, 1890, up to the completion of this Kali-Inla Hotel building?

Counsel for plaintiff objects to the question and states as his reason that all work done by Mr. Cooper on the Kali-Inla hotel prior to and subsequent to June 3rd, 1891, was done under contract, and

the estimates and statements of the work having been put in the form of vouchers are in the nature of accounts stated and can only be impeached for fraud or mistake.

Judge GILBERT: I do not understand that there had been any stated account in any of these matters, and certainly not in a great part of them; nor has there been any contract proved. The object in introducing this testimony is to prove the true value of the work done and material furnished by Cooper & Son, which is what we understand the order referring this matter to your honor means, it leaving it for you to determine what was justly and equitably due Cooper & Son as the true value of the work done.

Objection sustained by master; to which ruling Acting Receiver Gowen and the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, except. Counsel for Acting Receiver Gowen and the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, then stated to the master that they had the testimony of two architects who had made an examination of the hotel building, whom they wished to introduce as witnesses as to the true cost of the building and the true value of the work done and material furnished in said building, and asked the master whether the above ruling would exclude all such testimony, and if so there would be no use in their bringing them to South McAlester, as one lived at Denison, Texas, and the other at Kansas City, Mo., to which the master replied: "Here is a contract and specifications.
62 It is claimed that this work has been done under that contract and according to the plans and specifications. If you want to introduce this evidence to prove that this work was not done in accordance with the specifications I will admit it, otherwise I will not. I will not admit any testimony as to the actual value of the work done and materials furnished. I shall hold that until this contract is disproved I have no right to go into an investigation as to the value of the work. I shall hold that there was a contract, and the only question is whether that contract was complied with.

EDWIN D. CHADICK, being duly sworn, says:

My name is Edwin D. Chadick. I was general manager of the Choctaw Coal & Railway Company from its inception up to January 8th, 1891, when, with Mr. Francis I. Gowen, I was appointed receiver of the corporation. From January 8th, 1891, to August 28th, 1891, I was acting or managing receiver. Since that time Mr. Gowen has been acting or managing receiver. While I was general manager I represented to the board of directors there was necessity here for a building which should combine an office building and a hotel, and also, under certain circumstances, temporary occupancy for the United States court. I had gone at the instance of the board before the judiciary committee in Congress and stated that if Congress would locate the United States court at this place (there was then a bill pending for the establishment of the United States court in the Indian Territory)—if they would locate the second division at this point we would provide them, free of all cost, with the suitable

quarters. Prior to the beginning of the construction of this hotel I had been directed in general terms to build all necessary houses for our employés and for our business purposes which we thought needful. We were in tents when we first came, and the general directions were to build everything that was necessary. This United States court and hotel question came up, and after several conversations with Mr. Alderson, treasurer of the road and executive officer (that is, so far as everything we did then was referred to him, he being the one familiar with this enterprise, he having been out here and looked over the ground), this building was determined upon. I cannot say that at that time a very clear idea existed as to what we were to do with it further than in general terms that it was to be a headquarters for the road, a United States court, if we needed it, and a hotel. I ordered its construction by company work and got the walls up to the first story; that was done by force-work under the supervision of Corey, and I found that that was an expensive way of doing it and also unsatisfactory in that we could not calculate what it was going to cost us; W. H. Cooper & Son were engaged in constructing on the road section-houses, station-houses, etc., and I sent for them and we made an agreement
63 that they should do the whole of the hotel; I think that is set forth in the testimony; they did so, taking it at the time it was one story in height, and they have had it from that time to this; they knew it in Philadelphia because I informed them from time to time, and because my monthly estimates sent in contained vouchers for this building; those vouchers, as I recollect at this time, were always paid; I never heard any objection to them; never made to me, and I was the manager and probably would have heard it.

At the time this company went into the hands of receivers we owed Cooper & Son about $16,000; I am not quite sure, but think one-half was due on this hotel; by an agreement in Philadelphia that was entered into upon the 20th of December, the date of the first application for a receiver, on the 8th of January the bondholders agreed to allow $500,000 receivers' certificates to be issued to pay off the floating indebtedness; that indebtedness was presented to them in the form of a schedule by Mr. Walter Chamberlain, at that time auditor of the company, and it contained the vouchers of W. H. Cooper & Son, estimates, and all the data by which an account is usually settled in a railway office; and on the 8th of January after the appointment of the receivers these accounts were turned over to Mr. Gowen and myself by Mr. Chamberlain, and we spent the next ten days in the investigation of these accounts and checking them over, every account there; the method of checking was first handed to me by the auditor after he had audited it, then to the attorney for the creditor who had handled it in voucher; if everything was satisfactory to his creditor or client then it was stated to be correct by me and then handed to Mr. Gowen; Mr. Gowen's examination was the last and a settlement was arrived at after these processes; this account was handled in the same way and Mr. Cooper was paid all that was due him; his, by

the way, was the second account taken up; Mr. Spencer, as I understand it, was paid first and Mr. Cooper, or Mr. Garvey, was the second on the list; after examination in the manner indicated with an acceptance by Mr. Cooper's attorneys and Mr. Cooper himself, and Mr. Gowen and myself the payment was made one-half in cash and one-half in receivers' certificates; if my memory serves me correctly, the payment made to Mr. Cooper at that time was made by a draft of Mr. Gowen's—cash payment—draft of Mr. Gowen's on the Fourth Street National Bank of Philadelphia.

After the receivers had taken hold of the road—it was in the winter—this house was not roofed and a great deal of it was in peril; was really being injured by the weather; I went before the court and obtained an order, Mr. Gowen appearing at the same time with me, for Messrs. Petit & Waltz, of Denison, Texas, to roof this building and to make it weather-proof, to be beyond the reach of injury; that order was granted and that work was done; I cannot recollect whether any further order of the court was entered into beyond that for the roofing; there was no glazing beyond
64 that portion, no windows in all these towers and the upper stories here, and the rain was beating in; I conceived that the building was still suffering and authorized Mr. Cooper to go ahead and make it weather-tight, until the month of March or the latter part of February, when Mr. George Ashbridge was appointed treasurer to the receivers and came out here from Philadelphia; he represented that he had no room in the other building there and that the auditor's department and treasurer's department were so crowded that it was simply impossible to do the accounting work properly; I think that somewhere on my files will be found a written statement to that effect; he made the same statement to Mr. Gowen when he came out and I authorized Mr. Cooper to finish those offices on that side for the use of the treasurer and the auditor, and at the same time, to relieve the pressure on the other building, that he might fit up those offices upstairs on the floor above; at the same time I ordered this safe that stands there, at the suggestion of Mr. Ashbridge.

We had to hold the January term of court in the church here and it was not deemed desirable to hold it there again, and I had already looked over this matter, seeing that there was very little prospect of its being a hotel and carrying out the original object, but I do not know whether I talked it over with Mr. Cooper or not, but I looked around to see where we could get good quarters for the court; I think it was in April or May that he (Mr. Gowen) said a great deal of work had been done that was unnecessary in making this building weather-tight; I disagreed with him, but the subject dropped until later he came out again, the latter part of May; he remonstrated about the work on the hotel and I told him we had better stop it at once and we did stop it by a letter addressed to Mr. Cooper; I told him then we have got to have these quarters for the United States court and the best place is to have them there; his advice and counsel then was to stop the work, have Mr. Cooper make up his account to date, and then get him to make an estimate

of the gross amount for which he was willing to finish this court-room and finish it up complete; we did that in a letter which was dictated by Mr. Gowen and signed by both him and myself; the work was stopped immediately and Mr. Cooper proceeded to make up his account to date; afterwards, Mr. Cox—I want to state here that Mr. Cox's position as supervising architect was made prior to the receivership—and continued as that afterwards; he had charge of every building that has been put up in this town; I told him to go ahead and get up plans and specifications, subject to the court as to what they wanted; I believe they have been submitted here, and I believe that Mr. Cooper went on under that agreement; he wrote me what the price was and what he would allow me for the material on hand here; he did make an estimate and submitted it to me; Mr. Gowen was absent at the time; I do not know how long
65 he was absent or whether he came back before Mr. Cooper went to work, but I sent these plans and tracings to Muscogee to see whether they met with the approval of the court people and they were returned as acceptable and the work went on; I did accept the last proposition as made by Mr. Cooper and told him to go ahead; there was no formal acceptance that I recollect; this is the letter that is submitted in evidence:

SOUTH MCALESTER, IND. TER., *June 3d*, 1891.

Messrs. W. H. Cooper & Son, South McAlester, Indian Territory.

GENTLEMEN: Under direction of the court, we notify you to stop all work on the "Kali-Inla hotel" from this date and make out your bill for the work done up to and including today.

We will then furnish you with designs and directions as to the work to be done, and you will name a gross sum for the performance of the same, which we will submit to the court for their approval or disapproval.

Yours truly,

EDWIN D. CHADICK,
FRANCIS I. GOWEN,
Receivers Choctaw Coal & R'y Co.

This is a letter of my own, dated June 19th. It does not bear directly on this; it is only in reference to the payment and shows that we had considered the Cooper account as due and payable, and we were explaining for the delay.

SOUTH MCALESTER, IND. TER., *June 19th*, 1891.

Messrs. W. H. Cooper & Son, South McAlester, Indian Territory.

GENTLEMEN: Replying to your favor of the 17th inst., I desire to say that owing to the payment of interest on receivers' certificates this month and other back payments, we are unable to settle the amount due you on the two vouchers, amounting in the aggregate to $14,000. We expect, however, to be in shape early in July to pay all these matters, and will certainly pay all if business continues at the present rate. There is no apprehension and no indication of its letting up, and we are therefore confident that at all

events within the month named, we shall be able to settle with you either in full or for the greater portion of said vouchers. If
66 you desire it we will accept for 50 per cent. of the same and will endeavor to do better than that, if possible.

Very truly yours, EDWIN D. CHADICK,
For Receivers.

Mr. MOSELEY: Did that include the three vouchers put in evidence here due on the Kali-Inla hotel?

I cannot say, but I presume that it did; that is a matter the auditor can probably testify better than myself.

(Letter offered in evidence.)

SOUTH MCALESTER, IND. TER., *June* 23*d*, 1891.

Messrs. W. H. Cooper & Son, South McAlester.

GENTLEMEN: We have been advised by Major William Nelson, master, of the following order of the United States court:

"You are hereby directed to finish up court-room and all the offices on lower floor of hotel building, and also such rooms on second floor as may be necessary" in accordance with estimates to be hereinafter furnished.

Yours truly, EDWIN D. CHADICK,
For Receivers.
A. R. BOYD.

I was absent at the time, and the letter was signed by Mr. Boyd on receipt of the letter from the court.

Mr. MOSELEY: Did you receive that letter from Cooper & Son?

Yes, sir.

Mr. MOSELEY: I wish you would read that to the court.

This is dated South McAlester, June 24th, 1891.

E. D. Chadick, Esq., receiver C. C. & R'y Co.

DEAR SIR: We will furnish all material and complete according to plans and specifications that part of the west half of the hotel building to be used as U. S. court apartments for the sum of seven thousand nine hundred and seventy-eight dollars; also the east part of said building to be used as R. R. offices and auditor's and bank department, as per plans and specifications, for the sum of twenty-two hundred and seventy-two dollars or both for ten thousand two hundred and fifty dollars. The company has on hand ma-
67 terial to the value of $2,500, which it can furnish and deduct same from above amount.

Respectfully, ——— ———.

Mr. MOSELEY: Was that proposition accepted or refused?

My recollection is that we did accept it; I cannot say that I ever formally answered that letter; my memory does not serve me to that extent, and yet I have the impression that I did write a letter in reference to it.

These figures set forth in the Cooper letter were embraced in the contract as drawn up. I have examined Mr. Cooper's claim against the receivers prior to June 3rd, which has been vouchered and that since June 3rd, which has not been put in the form of a voucher; in my judgment it is a just and correct claim so far as I am acquainted with the details; the duties of Mr. Cox as supervising architect were to estimate and make the plans and tracings, supervise all buildings going up, to execute for the receivers or the manager (and there was no new arrangement under the receivers), and see that contracts were drawn up for the building of all these different structures that we had here. The plans and specifications under which this building was completed after June 3rd, were sent by me to Muscogee or sent by Mr. Cox under my direction, and as I understood were approved by the court.

The MASTER: I will state for information I presented it to the court myself; I presented it to the court and also the United States marshal; the judge and myself looked the matter over, the arrangement of the rooms, etc.; I was going to say it was submitted to the court and canvassed thoroughly and adopted and the court ordered the work done; it was upon the authority of the court that I gave the order spoken of by Mr. Cooper; it was not upon my own authority, but upon the authority of the court.

Mr. MCCLOUD: Was not that sent to you more for your folks to examine and see if the arrangement of the rooms and the facilities suited your wishes?

The MASTER: That is what it was sent for; to see if we had any suggestions to make in regard to the arrangement of the rooms.

Mr. MCLOUD: Was the question of the amount of the money to be paid for the work considered by you or the court?

The MASTER: No, sir; the court ordered the work done, leaving the matter of price entirely with the receivers.

Mr. MCLOUD: There was no order of court, then, ever made approving the contract to pay $10,250 for the work?

68 The MASTER: The court ordered the work done in conformity with the specifications, the matter of price to be left entirely with the receivers.

Mr. MCLOUD: The court made no order at all in regard to the price.

The MASTER: None at all; certainly.

Mr. Gowan knew of the building of the Kali-Inla hotel and approved the vouchers; he was present at the time of the settlement with Cooper of the debt accrued prior to the receivership.

Major Shellenberger held the position of assistant manager and chief engineer prior to the appointment of the receivers up to and including June 3rd, 1891; as such it was part of his duty to sign vouchers for work such as buildings in connection with the road; I cannot say that it was his duty to personally inspect the work, but he was to certify to the correctness of those whom he employed to inspect the work, who it was done for, etc.; his signature to a voucher I always considered the best evidence that the work had

been done and done correctly; it was our rule that his signature for work done in his department was sufficient evidence, and all that was required by me either as manager or receiver; the rules of the company were continued without change by the receivers; there was no change in this rule up to the time Major Shellenberger resigned; he was in full charge of the engineering department and all vouchers for construction were signed by him. Mr. Cox was at all times in charge as supervising architect. Major Shellenberger was at the head of that department and Mr. Cox was the member of that department employed for that specific purpose as draughtsman and architect; Mr. Cox's duties in the engineering department have always been in the office and in connection with buildings; he has not at any time been out in the field force. The contract of July 7th was drawn up by Mr. Cox and submitted to me; I approved it, not formally, because Mr. Gowen was not here; I looked it over and thought it was just and right. Mr. Cox was the supervising architect appointed first by the manager and continued by the receivers, and all the contracts for buildings and specifications for buildings before this had been drawn by him; this was in the ordinary line of his business and duty.

I knew that Mr. Cooper was working on this building in reliance on this contract and in accordance with its term-; I supposed these specifications would govern the settlement of it; Mr. Gowen knew of this contract at the time; he was present when it was given to me in the early part of July.

Cross-examination of EDWIN D. CHADICK:

I think that Mr. Cooper came to me twice in reference to that contract, and on both occasions I told him I would look it
69 over, but I did not have the time to look it over; I did not agree or disagree to it; I did not look it over; I think I wanted you (Mr. McLoud) to look it over and see if it was legally all right; I am not sure that I asked you to see Mr. Cox and Major Shellenberger about it; Mr. Cox was the supervising architect, with the power as such to draw the plans and specifications; as to his authority to execute contracts for the company I can say this: that most of the contracts before that time had been practically executed by Mr. Cox; my approval in most of those cases was *pro forma;* I am not an architect, and relied on Mr. Cox to tell me what was correct in these matters, and whether they were in a businesslike shape so far as he could judge from an architectural and engineering standpoint.

Mr. MCLOUD: Did he have general authority to sign and execute contracts for the company or for the receivers?

As I understand it, a receiver's powers are not transferrable to any one; the idea is this: when I instructed him to go into a thing and draw up the plans and specifications for building, that I was conferring the authority on him to do so; in effect, it was making the contract for these reasons: that inasmuch as I signed a contract on his representations and did not know what it was myself that Mr. Cox was the contracting party.

Mr. McLoud: But it was necessary to have your signature in order to have the contract executed?

If the receiver's signature was necessary, it was necessary to have my signature or Mr. Gowen's, or both.

The Master: Had you or Mr. Gowen, as receivers, or either of you, allowed work to be done for the Choctaw Coal & Railway Company here under a contract or contracts signed only by Mr. Cox as supervising architect?

I think so, as manager; I would not say as receiver; that had been the custom; I have not signed half the contracts that have been made here; that was so much the custom I never looked at anything but the specifications; it was in his line of duty, and I never thought of it; Major Shellenberger was responsible for him to me, and as manager I never interfered with anything of that kind; as receiver, this is the only contract that I know of; I do not think it varied from the usual rule in that matter; vouchers approved by Major Shellenberger had to be signed by at least one of the receivers before being paid.

Mr. McLoud: Who wrote the affidavit which has been filed in this case as answer, signed and sworn to by you?

It was written by Mr. Sandels, who offered it to me and asked if these were not the facts; I stated they were, after examining them.

70 There was an order of court for the roofing of this building costing $1,200 or $1,500; with the exception of a little order that I think was made for the guttering of the building, this was the only order made by the court in regard to this building except the order that has been referred to that was made for the completion of the court-rooms.

Mr. Cooper continued work, closing and putting in the lights, until Mr. Ashbridge and Mr. Gowen suggested we needed some room *room* here, which was in March or April; he continued working until the 3rd of June.

The agreement spoken of by me as having been made by me with Congress was as follows: There was a bill before the Judiciary Committee for the establishment of courts in the Indian Territory. I proposed to Mr. Peel, chairman of the Committee on Indian Affairs, that in the event of the location of one of these courts at South McAlester, we would provide them free of all cost, with safe and comfortable quarters, free of all cost to the United States. Nothing was said as to the site of the building or as to the cost or anything connected with it except what I have stated. The bill establishing the courts became a law and South McAlester was designated as the place for holding one of these courts.

The account of Mr. Cooper which I have stated was paid by me and Mr. Gowen was for all work done prior to the receivership.

The subject of the Kali-Inla hotel was brought before the board of directors in Philadelphia about the month of May, 1890. In all of these matters in connection with this hotel business I deemed it my duty that every one should be advised about it and nothing be

done without full and fair notice either under the management or the receivership.

Redirect examination of EDWIN D. CHADICK:

I retired from the active receivership August 28th, 1891. On the evening of the 28th, when we were at Muscogee I received a telegram stating that Mr. Cooper declined to allow the court officials to take possession of these rooms. I do not remember whether I received it or Mr. Gowen received it and handed it to me. I think I received it personally. I asked Mr. Gowen what was going to be done about this; we have got to have that room next week when the court meets and Cooper is holding it for the payment of his debt. He said, I will see Cooper the first thing in the morning and arrange about this. I said, "You will be sure to do this, for we will have trouble about this if you do not." He replied he would see Cooper the first thing in the morning and arrange it.

Mr. MOSELEY: Did Mr. Gowen in any conversation with you ever deny the obligation of the receivers to pay Mr. Cooper for completing this hotel or for the building of it?

71 Not that I know of; that I can recollect at all. The last time he was here after this matter came up we had some conversation, pretty sharp conversation, in reference to it. I told him it was late in the day to deny what he had known of all along. He must have known if he had two eyes in his head. I did not understand that he denied his knowledge of it or his practical acquies--ence in it, at least tacit acquies-ence. His conversation with me was particularly directed to the illegality of using the trust fund for that purpose. That is as I understood him at that time.

JUDGE GILBERT: You mean by that that he thought the trust fund ought not to be used for that purpose.

It was this last time. I told him it came with bad grace from him at this date to say that he had been here and had been blind and deaf and dumb enough not to know what had been going on and he did know, and his reply to me, as I understood it, was not denying that he knew it, but that it was an illegal use of the trust fund.

George A. Riviere.

GEORGE A. RIVIERE, being duly sworn, says: My name is George A. Riviere. Up to and incl-ding October 15th, I was auditor for the receivers of the Choctaw Coal & Railway Company from February 1st, 1891. I have seen the original voucher which is attached hereto as Exhibit H, and it has been paid.

Mr. MOSELEY: My sole object is to show that this went through Mr. Gowen's hands.

The MASTER: It is not necessary to introduce any testimony to show *that* Mr. Gowen's knowledge and approval of the work done on this hotel.

This voucher, dated February, 1891, on which a balance of $4,886.62 is due by the receivers to Mr. Cooper, was sent in to the

receivers in duplicate, in the same handwriting, same signature and same name of voucher. The vouchers were audited in my office by myself, numbered, recorded, signed and handed to the managing receiver for signature. Both vouchers were signed by Mr. Chadick and sent in to the acting treasurer, at that time Mr. Ashbridge, for payment. Mr. Ashbridge came with the voucher to me and said, I will send this voucher to Mr. Gowen to have both receivers' signature before I pay it, with a letter which I write to him for transmittal; he will sign the voucher. We have never seen the voucher back. Upon the return of Mr. Gowen here I requested him to tell me what has become of the voucher, because my records are incomplete; I fear always to have an inspection of the master and not have the voucher. He said I do not know where I put it; make a duplicate; in his presence I made a duplicate, handed it over to Mr. Chadick, sent in to Mr. Ashbridge and the last $900 were paid by the order of Mr. Gowen.

72 When Mr. Chamberlain was appointed auditor of the Choctaw Coal & Railway Company, he adopted a rule in force on all railroads of the United States, that in engineering and construction departments all vouchers are signed by the chief engineer; this rule was adopted by me when I became auditor and is still followed by my successor. When the chief engineer signs a voucher or certifies that the work has been performed, that prices agreed upon were approved and work done for which payment is to be made, he sends it to the receiver, the receiver examines it and returns it to the auditor to be audited, and extensions and additions are seen to be correct; it is numbered and recorded and then handed over to the receiver again; he signs it, and by the auditor transmits it to the treasurer for payment, if the treasurer has any money; the signature of the chief engineer as to the correctness of an account coming from the engineering department is sufficient, and you will find vouchers which have been paid with the signature of the chief engineer only, audited by me, without the signature of the receiver; I have seen and audited all of the vouchers presented in evidence and attached to the petition. As to the second contract with Cooper, made after June 3rd, I know nothing except that Mr. Gowen and Mr. Chadick came in to me, asking how much money do you owe Mr. Cooper; the amount due Mr. Cooper since June 3rd has not been audited; the vouchers were handed to me, but I could do nothing with them until I heard what Mr. Gowen wanted to do with them, because since the 28th of August Mr. Gowen is the managing and acting receiver; the duplicate vouchers from the chief engineer for work done after June 3rd, are in Mr. Gowen's office in Philadelphia; the originals are in the chief engineer's office; the one in Major Shellenberger's office is the original, and is signed; one is the duplicate; I do not know that there were any vouchers made by Major Shellenberger for work after June 3rd; all vouchers made after June 3rd are in Mr. Gowen's hands, for Cooper, Spencer, Wallace and others; when the chief engineer sends a voucher signed by him to the auditor, and it is recorded in the books of the company it becomes a debt of the company; I do not say that the chief

engineer and the auditor can make a binding debt against the company without the approval of either of the receivers; as auditor I always know where the requisition belongs, by whom the requisition is filed and by whom the work is performed; I knew very well in this case that Mr. Cooper was the contractor for the receivers; I knew it from both receivers; I knew that Major Shellenberger would not send me a voucher which the company does not owe, and knew from the fact that Major Shellenberger as chief engineer states that the work has been done, that it was correct.

H. W. Cox.

H. W. Cox, being duly sworn, says: My name is H. W. Cox; I was assistant engineer and supervising architect for the
73 Choctaw Coal & Railway Company during the year 1890; I held the same position under the receivers in the year 1891; the signature to the contract marked Exhibit E is my signature; I signed it by virtue of my authority as supervising architect; I was specially authorized to write and execute that contract by Mr. Chadick; the work done by Mr. Cooper on the Kali-Inla hotel was done in compliance with the terms of the specifications; Mr. Cooper performed the work under that contract and specifications in the year 1890; all work done by Mr. Cooper in 1891 prior to June 3rd was done by him under the same contract and specifications; I have examined some of the vouchers attached to the petition; the vouchers of April, 1891; May 9th, 1891; May and June, 1891, I made myself; they show all the work done on the hotel; the statements in those vouchers are true and the charges reasonable, and made in accordance with the contract and specifications attached as Exhibit E to the petition; I made the statement as agent for the receivers, as supervising architect, and certified there that the work was done by Mr. Cooper and the material was furnished by him in the construction of this hotel; the contract of July 7th was executed by me; the specifications are attached and made a part of the contract; I signed the original contract of which Exhibit — is a copy; right after the work was stopped, about the 3rd of June, Mr. Chadick came in and I think Major Nelson was down here, and he asked me to go down here to the hotel building with the major and see what they wanted done here for fixing the building up for court purposes. They came down. Major Nelson offered some suggestions as to how he would like to have it fixed, and Mr. Chadick instructed me to make the plans and specifications and submit them to the court, and he told me when I had finished them to send them up to Muscogee to Major Nelson; I sent them up there on the 6th of June, and judge they were correct, as they were returned and the work was ordered to be done. Then I went to work and drew up the contract in compliance with the specifications and the plans and I sent one copy of the contract to Mr. Cooper, with the specifications annexed, and sent another copy to Mr. Chadick's office, attached to the contract sent in to Mr. Chadick's office; I also sent a copy of the tracing and gave Mr. Cooper a copy to work by;

I did not get Mr. Cooper's bid; I think it was sent to Mr. Chadick. When I drew up the contract I understood from Mr. Chadick what the contract bid was and inserted the amount in the contract; I understood from Mr. Chadick that he ordered work to go ahead, and knowing what the amount was I inserted it in the contract and sent one copy to Mr. Chadick and one copy to Mr. Cooper; I do not know when Mr. Cooper's bid was sent to Mr. Chadick; after Mr. Cooper's bid was sent to Mr. Chadick he (Mr. Chadick) came down to the building with me and told me what the court wanted and what the court approved of, and talked it over and told me
74 to go ahead with it; Mr. Cooper was present at the time; I do not think there was any one else present then; the itemized statement, marked Exhibit II, shows the extra work done; it shows the contract price and includes the whole thing; the contract price was $10,250 and the extra work amounted to a little over $840, aggregating $11,092.74; I think I made up the itemized statement; this is my certificate indorsed upon it; I think it is a correct statement; the prices charged for the extra are reasonable and proper prices; I think the work is worth what is charged; the contract work for which $10,250 was charged was done in compliance with the specifications and plans. By order of Mr. Chadick, I made tracings and plans and sent them to Major Nelson to be submitted to the court; they were sent up about the 6th of June; the plan was approved and returned with some modifications suggested and I made the modifications; the specifications furnished Mr. Cooper were in accordance with the plans submitted to the court and were drawn up after the plan was determined on. During all this time I held the position of supervising architect.

Cross-examination of H. W. Cox:

I am by profession a civil engineer; I have been following the profession for 10 years; I am also an architect; I have been an architect for about 6 years; during this time I drew plans for buildings on the Atchison, Topeka & Santa Fé and Chicago & Northwestern railways for depots, section-houses, round-houses, railroad work, &c.; prior to the time of drawing the plans for the Kali-Inla Hotel building I had never drawn plans for a hotel building, nor for any building as large as this hotel; I studied architecture in Beloit college; I took a four-years scientific course, architecture being a part of that course; as architect I served the Chicago & Northwestern from 1881 to 1886; I do not remember the number of buildings put up by that road while I served them; my headquarters were at Tama City, Eagle Grove, Hawarden, Belvidere and De Kalb, Illinois; I held the same position there as here; did all the tracing, superintended building of bridges, &c.; I did not make any contracts then, only drew the plans; the engineer in charge of the work made the contracts.

Major Shellenberger was my superior officer, but I did not report to him or consult with him in the matter of building houses; I was assistant engineer in his department; in the latter part of December,

1889, Mr. Chadick came to me and said he wanted some one to look after the construction of the buildings; he promised me an extra salary if I would look after that, and those services were in addition to my duties as assistant engineer under the major; I worked on that in my own time, mornings, noons, and evenings; I think the reason I did not consult the major about the contracts was because it was extra work.

75 *L. P. Sandels.*

L. P. SANDELS, being duly sworn, deposes and says: Messrs. Moore & Wilson, as attorneys for Fritz Sittel, employed me in the negotiations or threatened lawsuit then pending with the company; Sittel is an Indian citizen, and owned a farm known as the Rock Cut farm, being the land upon which South McAlester is located; it seemed that a contract had been entered into between Fritz Sittel and Mr. Chadick, representing the Choctaw Coal & Railway Company, the terms of which were put as follows: That moneys were to be advanced to Sittel for the purpose of building upon this land the houses in and for the railroad company offices, offices of the court and houses for different persons to live in; Sittel had executed to Mr. Chadick a mortgage upon all the improvements so constructed of $45,000, and for sums to be advanced after that in the construction of the buildings; this mortgage was rather vaguely drawn, and each party to it put a different construction on it; and the object of our meeting was to agree upon a new contract, which would be in lieu of the old one, and which would not be capable of misconception; I met Mr. Gowen and had several talks with him upon the subject, in which we discussed the situation generally, and agreed among other things that a note should be given by Sittel for the actual amount expended upon the hotel, the note to be secured by a mortgage upon the hotel and the use of the hotel by the railroad and the court to be an offset against the interest on the note, Sittel to have the right at any time to pay the note and own the hotel; in this conversation there was no discussion as to the hotel being built by any one except the Choctaw Coal & Railway Company and the receivers, and it was agreed that the amount due by Sittel for its construction was due to the Choctaw Coal & Railway Company; or, in other words, the amount due by him was part of the fund in the hands of the receivers.

J. W. McLoud.

J. W. MCLOUD, being duly sworn, says: On the evening of August 27th, 1891, Mr. Chadick turned over to me the draft of contract and plans and specifications which are attached to the motion and petition of Mr. Cooper in this case; he asked me to examine it and see if it was properly drawn and to see Mr. Cox and Major Shellenberger the next day and see if it was all right, and if it was, to turn it over to Mr. Cooper; Mr. Cooper had been trying to get it for a number of days and had sent for it two or three times that day; he had left

it with Mr. Chadick about a week or ten days before for him to sign, and Mr. Chadick said he had not signed it because he had not had time to examine it and had not read it; I examined the contract the next day and approved the form of it, but did nothing further; the next day, August 28th, Mr. Cooper came to me to get it and I offered it to him and he said he did not want it unless it was
76 signed, and said that he had refused to let the marshal and clerk into the hotel building until the contract was signed; he asked me to either wire or go to Muscogee and get authority to sign it; I told him I would wire Mr. Chadick or Mr. Gowen at Muscogee that he refused to give possession of this building until this contract was signed, and if they authorized me to sign it I would do so; I wired them that Mr. Cooper refused to give possession of the building until the contract was signed; Mr. Chadick answered by wire that Mr. Gowen would be down in the morning and take the matter up with Mr. Cooper; the same day Mr. Lindley, deputy marshal, came to me and told me that Mr. Cooper refused to give possession of the building until his contract was signed——to Muscogee to the same effect about the same time I did; Mr. Cooper told me that he did not expect to get any money at that time and did not insist upon any, that all he wanted then was to have his contract signed by the receivers.

The next morning Mr. Gowen came down from Muscogee and took the matter up with Mr. Cooper in the treasurer's office at the Choctaw depot, at which I was present; Mr. Cooper said to Mr. Gowen that all he wanted was to have his contract signed before he delivered possession of the building, so that he would know what he was going on for the work and that there might be no question about the liability of the receivers for the indebtedness; he very frankly stated that he did not expect or insist upon any money at that time; Mr. Gowen said that the contract, plans and specifications were quite voluminous and it involved the payment of a large sum of money and he could not sign it until he had time to go through it and understand it and know just what he was doing; he said that he had Mr. Woods on his hands for that day and that Mr. Woods wanted to leave for Philadelphia that evening, and that it was important that he do so, but that the following Monday (this was on Saturday) he would try and take the matter up and go through it, or at least would do so just as soon as he possibly could, and if he approved of the contract would sign it; he told Mr. Cooper that he would lose nothing by letting the officers have possession of the building, and that whatever was owing to him for his work and material would be paid, but that he did not want to sign the contract that morning for the amount mentioned in the contract without knowing that it was right and proper; Mr. Cooper stated two or three times that all he wanted was a fair shake or a square deal (I forget which expression he used, but I think it was a fair shake), and repeated it two or three times; I spoke up and told Mr. Cooper that he would lose no right to whatever lien he might have by giving possession of the building and advised him to do so; the result of the conference was that Mr. Cooper afterwards gave possession of the

building to the marshal and clerk; Mr. Gowen made no promise in that conversation as to what amount he would pay Mr. Cooper or when he would pay it, and my recollection is that he did not
77 state that he thought Mr. Woods' report would be favorable and that if it was the Philadelphia people would put up the money to pay the indebtedness of the company; Mr. Woods was mentioned only incidentally and was not mentioned in any way that affected the matter in question between Mr. Gowen and Mr. Cooper.

Francis I. Gowen.

FRANCIS I. GOWEN, acting receiver of the Choctaw Coal & Railway Company, being duly sworn, deposes and says: The facts within my knowledge bearing upon the claim of W. H. Cooper & Son for work done and material furnished upon and for the hotel building at South McAlester, known as the "Kali-Inla hotel," are as follows:

After my appointment as one of the receivers of the Choctaw Coal & Railway Company, in a conference with my coreceiver, Mr. Chadick, it was agreed that all work upon the hotel building in question would be at once stopped except such as was necessary to protect the building from the weather, and for this the requisite authority was to be obtained from the court before any work of such a character even was done; this conclusion was arrived at during the month of January last, and Mr. Chadick undertook to inform Mr. Cooper of our conclusions and to give the necessary directions for the stoppage of all work pending the obtaining of the necessary orders.

In accordance therewith a petition was shortly thereafter presented to the court for permission to enter into a contract for the roofing of the building and an order was made authorizing same; of which order I was duly advised and concurred in the making of the contract that was thereafter made for the work authorized as aforesaid.

After this understanding with Mr. Chadick and assuming that he would carry out the arrangement made between us, I did not give the matter any further consideration for some time, until, I think, in the month of March, although of this I cannot at this long interval of time be certain when my attention was called to the fact that the inside work was still going on at the hotel building; I called Mr. Chadick's attention to this matter and my recollection is that he then stated to me that he did not think any work was being done except such as was necessary to make the building weather-tight, but that if any was being done he would see that Mr. Cooper stopped at once; we had, I recall, some conversation about the fact that the permission of the court had not been obtained for any work except the roofing, and he then undertook to have the necessary petition presented for authority to do the further work necessary to close the building.

I think it was during my next visit to South McAlester that Mr. Ashbridge, who was then acting as treasurer for the receivers,

78 spoke to me about the inconvenient office room for his and the auditor's departments, of which he had previously spoken to Mr. Chadick, and upon his representations that the two departments were so cramped as to greatly interfere with the efficient transaction of business, I agreed to the fitting up of quarters for the two departments in the hotel building, and Mr. Chadick and I after consultation as to the amount of room required, agreed that the eastern part of the ground floor should be fitted up for this purpose, as that would give ample room for both departments, and Mr. Chadick again undertook to obtain the necessary order of the court, granting us authority to do this work.

Upon the occasion of my next visit to South McAlester, it was in the latter part of May, I learned that the inside work upon the building, other than that required to fit up the offices in question, was still progressing, and I remember that I had rather a sharp conversation with Mr. Chadick upon the subject, in which I reminded him of the fact that he had undertaken to have this work entirely stopped. He afterwards in a conversation with Mr. Morris and myself admitted that he had permitted this inside work to go on, but that he had done it because he thought he would be able to make some advantageous use of the building upon its completion, and then and there stated the responsibility for the continuance of this work was his and that it had been done against my wish and protest; it was after this last conversation with Mr. Chadick that I wrote the letter of June 3rd, 1891, addressed to Messrs. W. H. Cooper & Son, which is already in evidence and which Mr. Chadick and I both signed; my object in writing this letter was to put the matter in such shape that Mr. Cooper could not enter into any other arrangement without my concurrence and without the prior approval of the court, as I feared that he might induce Mr. Chadick to agree to some arrangement for continuance of the work which would involve further complications with him; my object in asking Mr. Cooper to submit his bill for all work done up to date of the letter, was that he might submit the same to the court and ask directions as to its payment and I assumed that the court would pass upon the matter, directing the payment of such sum as would be just and proper compensation for the work done, irrespective of any contract which might have been made prior to the appointment of the receivers.

The letter of June 24th, 1891, of Messrs. Cooper & Son to Mr. Chadick I never saw or heard of, until the end of August after Mr. Cooper had had the conversation with me about signing the contract, to which he refers to in his testimony, and I beg to call the attention of the court to the fact that for some reason or other this letter was addressed to Mr. Chadick alone, although the letter of June 3rd, 1891, had been signed by both Mr. Chadick and myself; it is true, of course, that I knew and saw that work upon the court rooms and offices was going on, but I was informed by Mr.
79 Chadick that this was being done by direction of the court, and I assumed and believed that as had been the case heretofore Mr. Cooper was going on with the work with Mr. Chadick's

concurrence without any regard to the directions given in the letter of June 3rd, 1891, already referred to, and without furnishing any estimate and without making any contract after due authority obtained from the court; I made no protest against this at the time because I understood the work had to be done and I felt confident that when it came to paying for it the court would take care that in justice to the other creditors Mr. Cooper would not be allowed any excessive sum; had I known while the work was in progress, that the letter of June 24th, 1891, had been written and that a contract for the amount named therein had been prepared and submitted by Mr. Cooper, I should at once have taken action in the matter, as I believe that the sum named in said contract is grossly excessive; as I have already said, the first intimation I had of the existence of this contract was upon August, 29th, 1891, when my attention was called to it by Mr. Cooper and I was asked to sign it as a presequisite to his permitting the marshal to take possession of the rooms fitted up for the court and the clerk's and marshal's office; referring to this conversation I desire to say in the most emphatic manner that I did not then or at any other time promise to agree to pay Mr. Cooper the amount named in the contract; on the contrary, I declined to sign the contract and so stated to Mr. Cooper, because I was not satisfied that the price of the work named therein was proper, and I said to Mr. Cooper until I was satisfied upon this point, I would not sign the contract; in this connection it is proper to say that at the conversation referred to Mr. Cooper did not even ask me to make any payment, but on the contrary stated that all he desired was that the contract should be signed before he permitted the marshal to take possession of the quarters for the court and any statement that he then asked me to pay the sum named in the contract and that I agreed to do so is absolutely and unqualifiedly false.

In compliance with my statement to Mr. Cooper that I would at once take up the matter and ascertain whether the price named in the contract was a proper one, I secured the services of a competent builder and architect and had him make a thorough examination of the building with a view of determining a just value of the work and materials furnished, but before a full report was received by me upon this subject. Mr. Cooper commenced proceedings for the collection of the amount alleged by him to be due, and of course any further negotiation with him was impracticable. The report made to me by the builder shows that the charges made by Mr. Cooper for work upon this hotel building was grossly excessive and in my judgment this fact would have been demonstrated had the master permitted the introduction of testimony to this effect, instead of holding the receivers bound by the estimates given by Mr. Cox and the letter of June 24th, 1891, written by Mr. Cooper.

80 With reference to Mr. Cox's authority to bind the receivers by estimates and to thus subject the property in their charge to claims of the magnitude of the present one, I have to say that I have never by word or deed given any one the right to suppose that Mr. Cox had any such authority, and I never, in point of fact, con-

ferred or joined in conferring on Mr. Cox any such authority whatever, and I submit most respectfully that no such authority should be imputed to him, because it in no way appears or can be made to appear that any action of the receivers had conferred upon him the right to subject the property of the company to unfounded and unjust and exhorbitant claims, and to assume that such authority had been conferred would be to permit the receivers to confer upon their subordinate power to do what they themselves could not do by undertaking to pay sums in excess of the true value of the work or material furnished for or on their account.

Were the court to sanction the rule adopted by the master great injustice would in my judgment be done to the creditors of the receivers, especially to the wage-earners whose wages are now in arrear, and to the creditors for supplies furnished whose claims have been unpaid for months past, and among whom already considerable dissatisfaction exists because of the preference that has been given to the claim of Mr. Cooper, whose claim is certainly not more meritorious than others, and who would have just cause of complaint, it seems to me, if preference is not only given to his claim but in addition he is permitted, irrespective of the value of the work, to recover greatly in excess thereof.

With reference to this last question, I beg to state that if Mr. Cooper is allowed the sum awarded to him by the master, he will have been paid upwards of $20,000 in excess of the value of the work done by him upon the building and materials furnished by him for it, according to the estimate of the builder in question, and which estimate it is believed would have been fully substantiated if all testimony to this effect had not been excluded by the master.

IV.

Report of Master.

Be it further remembered, that on the 16th day of November, 1891, Major William Nelson, special master in chancery in said cause, made his report to the court upon the claim of said Cooper & Son against the receivers of said railway company, except as to the drug store described in the Cooper & Son complaint, which report is as follows:

In the Matter of the Claim of W. H. COOPER & SON against EDWIN D. CHADICK & FRANCIS I. GOWEN, Receivers.

81 In the United States Court in the Indian Territory, Second Judicial Division.

LANGHORNE WISTER
vs.
CHOCTAW COAL & RAILWAY COMPANY.

Comes now William Nelson, hitherto appointed master in the case of Langhorne Wister *vs.* Choctaw Coal & Railway Company

and respectfully submits his report in this cause except as to the claim of W. H. Cooper & Son against said receivers for erecting a certain building in South McAlester known as the drug store; a report of which claim will hereafter be made separately and distinct from the matters embraced in this report, and which has been continued at the special request of the attorneys of the receivers until the 25th day of November, 1891.

Edwin D. Chadick and Francis I. Gowen, receivers, to W. H. Cooper & Son, Dr.

To voucher, April, 1891	1,152 73
To interest on same at 6% from April 1st to Oct. 13th.	37.655
To voucher, May 9th	11,182 97
To interest on same at 6% from May 9th to Oct. 13th.	292.621
To voucher, June 3rd	3,287 69
To interest on same at 6% from June 3rd to Oct. 13th.	72.329
To voucher #442, May 26th	92 25
To interest on same at 6% from May 26th to Oct. 13th.	2.152
To voucher #487, June 3rd, (corrected)	789 12
To interest on same at 6% from June 3rd to Oct. 13th.	17 36
To voucher #610, June 3rd	612 00
To interest on same at 6% from June 3rd to Oct. 13th.	13.464
To voucher #773, July 1st	74 95
To interest on same at 6% from July 1st to Oct. 13th.	1.311
To voucher #1020, August 1st	29 15
To interest on same at 6% from Aug. 1st to Oct. 13th.	.359
To voucher #940, August 25th	3 45
To interest on same at 6% from Aug. 25th to Oct. 13th.	.028
August 10th. Lumber trans. department (not vouchered)	3 00
August 1st. 3 book-cases	48 00
August 1st. Removing safe	51 00
Sept. 2nd. Lumber, motive-power department	26 16
Sept. 2nd. To platforms, etc	262 80
To contract on Kali-Inla hotel, dated July 7th, 1891	10,250 00
To extra work and material furnished on Kali-Inla hotel in addition to contract of above date	842 74
Total	29,145 28

82 Cr.

The above amount is entitled to a credit agreed upon before me by the respective parties in this suit, of	14,225 91
Balance due W. H. Cooper & Son, October 13th, 1891	$14,919 37

At the request of attorneys for receivers I append to above report the following findings of fact and law:

Findings of Fact.

1. I find that the vouchers above mentioned are valid and were issued in good faith by agents of the receivers, having authority so to do; and that W. H. Cooper & Son were given credit upon books of said company for the amounts so vouchered, and were charged with such vouchers; and that said vouchers constituted and became a debt from the receivers to W. H. Cooper & Son, due and payable upon date of issuance.

2. I find that the contract under and by virtue of which all work was done and materials furnished upon Kali-Inla hotel from and after June 3d, 1891, and the specifications, plans and drawings furnished therewith, were executed, furnished and delivered by agents of the receivers having authority so to do, and under the special direction and approval of the receivers themselves and of this honorable court.

3. That the work performed and materials furnished were so furnished and performed by W. H. Cooper & Son under and by virtue of and in reliance upon the contract aforesaid, and that the receivers knew that said W. H. Cooper & Son were so performing work and furnishing materials under and by virtue of said contract and in full reliance thereon; and with such knowledge approved of the work of said Cooper & Son, and managed and directed said Cooper & Son in the progress of said work, and have now received the benefit of said work and are in the possession of said hotel.

4. I find that said W. H. Cooper & Son did all of the work done under the contract of July 7th, 1891, in strict accordance with the details, plans and specifications furnished him with said contract by said receivers, and is entitled to the contract price.

5. Further, that the extra work charged for was done under and by virtue of a provision in said contract, and at the suggestion of the supervising architect, furnished by the receivers and with his approval; and that the prices charged for such extra work and materials furnished are reasonable and true.

Findings of Law.

1. I find, as a matter of law, that the vouchers hereinbefore mentioned are in the nature of accounts stated, and having been
83 acquiesced in by both parties cannot now be impeached by either party except through allegation and proof of fraud or mistake.

2. I find, as a matter of law, that the receivers having had full knowledge of the fact that W. H. Cooper & Son were doing work and furnishing materials on Kali-Inla hotel in reliance upon contract of July 7th, 1891, and that the receivers having encouraged and countenanced their work thereunder and furnished them with a supervising architect to superintend the same, and that the receivers, having received and gone into possession thereof, are now estopped from denying their obligations to said Cooper & Son under

said contract; and that their only defence to that part of the claim of said Cooper & Son is in showing that the work performed by said Cooper & Son and materials furnished by them were not in accordance with the details, plans and specifications attached to said contract.

WILLIAM NELSON,
Special Master.

Exceptions to Master's Report.

Be it further remembered, that on the 25th day of November, 1891, Francis I. Gowen, acting receiver of the Choctaw Coal & Railway Company, and the Girard Life Insurance Annuity & Trust Company, of Philadelphia, trustee, filed their separate exceptions to the report of said master, said exceptions being the same in each case, and are as follows:

1st. Said Nelson, special master, erred in refusing to admit testimony as to the true value of the work done and materials furnished upon the Kali-Inla Hotel building at South McAlester, Indian Territory.

2nd. Said special master erred in failing to find and report, as required and directed by order of this honorable court, which order directed him to find the amount due Cooper as the true value for the work done and material furnished on said Kali-Inla building.

3rd. Said special master erred in finding that the pretended contract of July 7th was binding upon said receivers and upon the property in their hands, for the following reasons:

A. Because receivers have no power to bind property in their charge by exorbitant and improvident contracts, even where said contracts are signed and executed by the receivers, and we would, had not the master erroniously excluded the same, proved at said hearing that the said pretended contract was improvident and exorbitant.

B. Because said pretended contract was not signed or executed or approved by said receivers or by their express authority.

84 C. Because there is no evidence that Mr. Cox had authority to bind the receivers, which fact was understood by W. H. Cooper and recognized by him when he insisted on having said contract signed by one of the receivers before delivering possession of the building to the marshal and officers of the court.

D. Because said pretended contract unless specifically authorized by the court was *ultra vires*, and we submit that said contract never was authorized by the court and was never submitted to the court and approved by the court.

E. Because the letter of June 3rd from Edwin D. Chadick and Francis I. Gowen to said Cooper & Son, in which they directed them to stop work and asked them to make a bid in a gross sum for the completion of the work, and their answer thereto, both show that said bid was to be accepted and said work to be continued and completed only after an order from the court was obtained therefor.

4th. Said special master erred in holding that the vouchers at-

tached of said Cooper & Son for work and material on said building filed in the auditor's office, became accounts stated, and erred in holding that said vouchers became evidences of indebtedness against said receivers that could not be questioned or disputed except for fraud or mistake, none of said vouchers having been approved by the receivers or either of them. And erred in computing interest on said vouchers.

5th. Said special master erred in holding that said Cox had authority to bind the receivers or charge the property in their hands by his approval of said vouchers.

6th. Said special master erred in finding that the receivers had full knowledge of the fact that Cooper & Son were doing work and furnishing material on said building in reliance on said pretended contract of July 7th, 1891; and erred in finding that said receivers encouraged and countenanced said work under said contract; and erred in finding that said receivers furnished them with a supervising architect to superintend the same; and said special master erred in finding as a conclusion of law that for said reasons said receivers are now estopped from denying their obligations to said Cooper & Sons under said pretended contract.

7th. Said special master erred in holding as a conclusion of law that the only defense which the said receivers can have to the claim of said Cooper & Son is in showing that the work performed *ny* said Cooper & Son and material furnished by them were not in accordance with the details, plans and specifications attached to said contract.

8th. Said special master erred in finding that there was due said Cooper & Son the sum of $14,919.37.

85 Be it further remembered that on the 14th day of December, 1891, W. H. Cooper & Son filed motion to strike out exceptions of the Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, to the master's report, a copy of which motion appears in full on page 58 of the transcript.

And on the same day said Cooper & Son filed their motion to strike out the exceptions of Francis I. Gowen, acting receiver, to the report of said master, a copy of which motion is set out in full on page 57 of the transcript.

Be it further remembered that on the 19th day of January, 1892, the court rendered judgment sustaining said motions to strike the exceptions from file and rendered judgment confirming report of said *said* master and rendered judgment against the receivers of said company for the sum of $14,749.45, to which appellants excepted; which judgment, order and decree of court appears in full on page 59 of the transcript.

Be it further remembered that on the 20th day of January, 1892, appellants in open court filed their motions for a new trial or rehearing before the master, which motions are set out in full on pages 61 & 63 of the transcript.

Be it further remembered that on the 29th day of January, 1892, the court rendered judgment overruling motions for a new trial, to

which appellants excepted; which judgment is set out in full on page 65 of the transcript.

Be it further remembered that on the 30th day of January, 1892, appellants filed their petition for an appeal in the said cause and attached thereto their assignment of errors; which petition and assignment of errors are set out in full on page 153 of the transcript.

On the same day in open court the court rendered judgment, allowing said appeal; which order of court is set out on page 66 of the transcript.

Be it further remembered that on the 8 of February, 1892, appellants filed their appeal bond to said cause, which on said day was acknowledged and approved by the court in open court.

It is hereby stipulated and agreed by and between the attorneys for the parties hereto that the above and foregoing 81 original pages is a true and correct bill of exceptions in said cause, and contains either in fact or by reference to the pages of the transcript herein all of the testimony in said cause and which it is desired to have considered on this appeal. This Feb'y 26th, 1892.

J. W. McLOUD,
Att'y for Appellants.
A. G. MOSELY,
SANDELS & HILL,
For Appellee.

86 And now the appellants herein come and tender to the court their bill of exceptions, which they pray be signed by the court and ordered to be filed and made a part of the record in this cause, which is accordingly done, and this their bill of exceptions is signed and sealed this 27th day of February, 1892.

JAMES M. SHACKELFORD,
Judge of the United States Court in the Indian Territory.

Be it further remembered that on the 8th day of February, 1892, appellants herein filed their appeal and supercedeas bond in said cause in open court, which bond was on said date acknowledged in open court by the clerk thereof, and approved in open court and signed in open court by the judge of said court, which bond is as follows:

Appeal and Supercedeas Bond.

GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY OF Philadelphia, Trustee, and Francis I. Gowen, Acting Receiver, Appellants,

vs.

W. H. COOPER & SON, Appellees.

Know all men by these presents, that we, The Girard Life Insurance Annuity and Trust Company of Philadelphia, trustee, and Francis I. Gowan, acting receiver of the Choctaw Coal and Railway Company, and J. J. McAlester of the Indian Territory, are held and

firmly bound unto the above-named W. H. Cooper & Son in the sum of $15,000 (fifteen thousand dollars) to be paid to the said W. H. Cooper and Son, for the payment of which, well and truly to be made, we bind ourselves and each of us, our, and each of our heirs, executors and administrators, jointly and severally, firmly by these presents.

Sealed with our hands and dated the 8th day of February, 1892.

Whereas, the above-named, The Girard Life Insurance Annuity and Trust Company of Philadelphia, trustee, and Francis I. Gowen, acting receiver of the Choctaw Coal and Railway Company, have prosecuted an appeal to the circuit court of appeals of the eighth judicial district of the United States to reverse a decree rendered in the above-entitled cause by the judge of the United States court in the Indian Territory, second judicial division, sitting at South McAlester, Indian Territory.

Now therefore, the condition of this obligation is such that if the above-named, The Girard Life Insurance, Annuity and Trust Company of Philadelphia, trustee, and Francis I. Gowen, acting receiver
87 of the Choctaw Coal & Railway Company, shall prosecute said appeal to effect and answer all damages and costs if it fail to make said appeal good, then this obligation shall be void.

THE GIRARD LIFE INSURANCE,
ANNUITY & TRUST COMPANY
OF PHILADELPHIA, *Trustee*,
By J. W. McLOUD, *Its Att'y.*
FRANCIS I. GOWEN,
Acting Receiver of the Choctaw Coal & Railway Company,
By J. M. McLOUD, *His Att'y.*
JAS. J. McALESTER.

Sealed and delivered and taken and acknowledged this 8th day of February, 1892, before me—

WM. NELSON,
Clerk U. S. Court,
By T. N. FOSTER, *Deputy.*

Approved in open court this 8th day of February, 1892.

JAMES M. SHACKELFORD,
Judge of the United States Court in the Indian Territory.

Be it further remembered, that with their petition for appeal herein, appellants filed with said court on the 30th day of January, 1892, the following assignment of errors:

In the United States Court in the Indian Territory, Second Judicial Division. In Equity.

LANGHORNE WISTER and GIRARD LIFE INSURANCE, ANNUITY & TRUST COMPANY OF PHILADELPHIA, Trustee, Plaintiffs,
vs.
CHOCTAW COAL & RAILWAY COMPANY, Defendant.

In the matter of the intervention of W. H. Cooper & Son in the above cause against Edwin D. Chadick and Francis I. Gowen, receivers of the Choctaw Coal & Railway Company, appointed in the above cause.

Assignment of Errors.

The appellants, The Girard Life Insurance Annuity & Trust Company of Philadelphia, trustees, and Francis I. Gowen, acting receiver, made the following assignment of errors in the cause of W. H. Cooper & Son against the receivers of the Choctaw Coal &
88 Railway Company, which cause is pending in the above-entitled receivership cause.

1st. The court erred in sustaining the motions of W. H. Cooper & Son to strike out the exceptions of appellants to the master's report, which motion was filed in open court December 14th, 1891, and sustained by the court on the 19th day of January, 1892.

2nd. The court erred in its construction of the order of said court made at Ardmore, I. T., October 13th, 1891, and in holding that said order submitted the matters at issue in said cause of Cooper & Son against said receivers to the special master for final adjudication, and made his findings thereon conclusive.

3rd. The court erred in sustaining said motions to strike out exceptions and in rendering judgment thereon.

4th. The court erred in not allowing appellants to make their proper defense to said claim of Cooper & Son before the master or in said court, and erred in confirming the report of said master, because said master had refused to receive or consider the evidence as to the value of the work done and material furnished by Cooper & Son; and the court further erred in holding the findings and action of said master conclusive; and by declining and refusing to receive and consider the exceptions of said appellants filed against said report.

5th. The judgment rendered by said court on the 19th day of January, 1892, is against the weight of evidence and against the evidence and contrary to law.

6th. The court erred in rendering judgment confirming the report of said master and rendering judgment thereon in favor of said Cooper & Son, for the reasons set forth in the exceptions of appellants to said report of said master.

7th. The court erred in rendering judgment confirming the report of said master, because said master refused to admit testimony as to the true value of the work done and materials furnished on said Kali-Inla Hotel building at South McAlester, Indian Territory, as

directed by the order of October 13th, 1891, and which was duly excepted to by appellants in their exceptions to said master's report, as shown by the record.

8th. The court erred in rendering judgment confirming the report of said master, because said master failed to find and report as required and directed by the order of said court of October 13th, 1891, which order directed him to find the amount due Cooper & Son as the true value of the work done and material furnished on said Kali-Inla Hotel building, and which was duly excepted to by appellants in their exceptions to said master's report, as shown by the record.

89 9th. The court erred in rendering judgment confirming the report of said master, because said master erred in finding the pretended contract of July 7th, 1891, was binding upon said receivers and upon the property in their hands, for the following reasons:

A. Because receivers have no power to bind property in their charge by exorbitant and improvident contracts, even where said contracts are signed and executed by the receivers, and we would, had not the master erroniously excluded the same, — proved at said hearing that said pretended contract was improvident and exorbitant.

B. Because said pretended contract was not signed or executed or approved by said receivers or by their express authority.

C. Because there is no evidence that Mr. Cox had authority to bind the receivers, which fact was understood by W. H. Cooper and recognized by him when he insisted upon having said contract signed by one of the receivers before delivering possession of the building to the marshal and officers of the court, August 29th, 1891.

D. Because said pretended contract unless specifically authorized by the court was *ultra vires*, and we submit that said contract never was authorized by the court and was never submitted to the court or approved by the court.

E. Because the letter of June 3rd, 1891, from Edwin D. Chadick and Francis I. Gowen to said Cooper & Son, in which they directed them to stop work and asked them to make a bid in a gross sum for the completion of the work, and their answer thereto, both show that said bid was to be accepted and said work to be continued and completed only after an order from the court was obtained therefor.

All of which was duly excepted to by appellants in their exceptions to said master's report, as shown by the record.

10th. The court erred in rendering judgment confirming the report of said master, because in said report said master erred in holding that the vouchers introduced in evidence in favor of said Cooper & Son for work and material on said building, and filed in the auditor's office, became evidence of indebtedness against said receivers in the nature of accounts stated, and could not be questioned or disputed except for fraud or mistake, none of said vouchers having been approved by either of said receivers; which was duly

excepted to by appellants in their exceptions to said master's report, as shown by the record.

11th. The court erred in rendering judgment confirming the report of said master, because said master in said report erred
90 in holding that said Cox had authority to bind said receivers or charge the property in their hands by his approval of vouchers; which was duly excepted to by appellants in their exceptions to said master's report, as shown by the record.

12th. The court erred in rendering judgment confirming the report of said master, because said master in said report erred in holding that the receivers had full knowledge of the fact that Cooper & Son were doing work and furnishing material on said building in reliance on said pretended contract of July 7th, 1891; and erred in finding that said receivers encouraged and countenanced said work under said pretended contract; and erred in finding that said receivers furnished Cooper & Son with a supervising architect to superintend the same; and erred in finding as a conclusion of law that said receivers are now estopped from denying their obligations to said Cooper & Son under said pretended contract; which was duly excepted to by appellants in their exceptions to said master's report, as shown by the record.

13. The court erred in rendering judgment confirming the report of said master, because said master erred in holding as a conclusion of law that the only defense that said receivers could have to the claim of said Cooper & Son was in showing that the work performed by said Cooper & Son, and material furnished by them, were not in accordance with the details, plans and specifications, attached to said pretended contract; which was duly excepted to by appellants in their exceptions to said master's report, as shown by the record.

14. The court erred in said order of the 19th day of January, 1892, in stating that when the petition of Paul Waples and others was heard and determined October 13th, 1891, that the court in said order declared and recognized the validity of the claim of said Cooper & Son; which was duly excepted to by appellants, as shown by the record.

15. The court erred in stating in said order of the 19th day of January, 1892, and including in said order the following words: "And it being stated by receivers that they were entitled to certain credits on said account at Ardmore, I. T., October 13th, 1891, the court referred the said claim to the special master with instructions to ascertain the amount due upon said claim, the validity of which had been adjudged by the court," the same being contrary to the language and meaning of said order of October 13th, 1891, and unsupported by anything in the record, and the same being a pretended statement of fact that can form no legal part of a judgment or decree and is therefore irrelevant and surplusage.

16. The court erred in rendering judgment in favor of said Cooper & Son for the sum of $14,749.45; which was duly excepted to by appellants, as shown by the record.

91 17. The court erred in its order of January 29th, overruling the motion for a new trial and rehearing before the master, and in confirming said judgment of January 19th, and making the same the final order of the court, for the reasons set out in said motion which are made a part of this record; which order was duly excepted to by appellants.

18. The court erred in confirming said master's report, because said master erred in admitting in evidence said pretended contract of May 23rd, 1890, and in holding that said contract was binding upon said receivers, and made them liable for work done after the appointment of receivers; which was objected to and excepted to by appellants; said contract is marked "G."

Wherefore the appellants, The Girard Life Insurance Annuity & Trust Company of Philadelphia, trustee, and Francis I. Gowen, acting receiver of the Choctaw Coal & Railway Company, pray that said final order and judgment of January 19th, 1892, rendered in the cause of W. H. Cooper & Son against said receivers as aforesaid, be reversed and set aside and held for naught, and that the matter of the claim of W. H. Cooper & Son against the receivers of the Choctaw Coal & Railway Company be ordered again referred to the special master in said cause, for said master to investigate the matter and to determine the amount due said Cooper & Son, if any, as the true value of the work done and material furnished by said Cooper & Son in the construction of said Kali-Inla Hotel building at South McAlester, Indian Territory, in compliance with the order of said court of October 13th, 1891; and that appellants have judgment for their reasonable costs in this behalf expended.

THE GIRARD LIFE INSURANCE,
ANNUITY & TRUST COMPANY
OF PHILADELPHIA, *Trustee*,
By J. W. McLOUD, *Its Attorney*.
FRANCIS I. GOWEN,
Acting Receiver of the Choctaw Coal & Railway Company,
By S. A. GILBERT, *His Attorney*.

In the United States Court in the Indian Territory.

I, William Nelson, clerk of said court, do hereby certify that the above and foregoing is a true and correct copy of the record, the bill of exceptions, assignment of errors, and contains the original bill of exceptions, and a true and correct copy of all the proceedings had, and as agreed upon by the parties in the above-entitled cause, being the cause of W. H. Cooper & Son *vs.* The Receivers of the Choctaw Coal & Railway Company.

Witness my hand and the seal of said court, this 28th day of March, 1892.

[Seal of the United States Court, Indian Territory, First Division.]

WILLIAM NELSON, *Clerk*.

Filed Mar. 30, 1892. John D. Jordan, clerk.

92 And on the sixth day of April, A. D. 1892, an appearance of counsel for appellant- was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit.

GIRARD LIFE INSURANCE, ANNUITY AND TRUST Co., Trustee, *et al.*, Appellants, *vs.* W. H. COOPER *et al.*	No. 109. October Term, 1891.

The clerk will enter my appearance as counsel for the appellant The Girard Life Insurance, Annuity and Trust Company, trustee, etc.

J. W. McLOUD.

Endorsed: U. S. circuit court of appeals, eighth circuit. 1891, October term. No. 109. Girard Life Ins., Annuity & Trust Co., trustee, etc., *et al.*, appellants, *vs.* W. H. Cooper *et al.* Appearance of trustee. Filed Apr. 6, 1892. John D. Jordan, clerk. J. W. McLoud, So. McAlester, Ind. Ter., counsel for trust Co., appellant.

And on the first day of June, A. D. 1892, an appearance of counsel for appellants was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit.

THE GIRARD LIFE INSURANCE, ANNUITY AND Trust Company, Trustee, and Francis I. Gowen, Acting Receiver of Choctaw Coal and Railway Company, Appellants, *vs.* W. H. COOPER and JAMES COOPER, Composing Firm of W. H. Cooper & Son, Appellees.	No. 109. October Term, 1891.

The clerk will enter my appearance as counsel for the appellant-.

SAM'L DICKSON.

93 Endorsed: U. S. circuit court of appeals, eighth circuit. 1891, October term. No. 109. Girard Life Ins., An. & Trust Co. *et al.*, appellants, *vs.* W. H. Cooper *et al.* Appearance. Filed Jun- 1, 1892. John D. Jordan, clerk. Sam'l Dickson, Esq., Philadelphia, Pa., counsel for appellants.

And on the ninth day of May, A. D. 1892, an appearance of counsel for appellees was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit.

GIRARD LIFE INS. & ANNUITY & TRUST COMPANY *et al.*, Appellants,
vs.
W. H. COOPER *et al.*, Appellees.
No. 109. October Term, 1891.

The clerk will enter my appearance as counsel for the appellees.
L. P. SANDELS.

Endorsed: U. S. circuit court of appeals, eighth circuit. 189–, October term. No. 109. Girard Life Insurance, & etc., *vs.* W. H. Cooper *et al.* Appearance. Filed May 9, 1892. John D. Jordan, clerk. L. P. Sandels, counsel for defendants in error.

And on the twentieth day of June, A. D. 1892, an appearance of counsel for appellees was filed in the clerk's office of said circuit court of appeals in the words and figures following:

United States Circuit Court of Appeals, Eighth Circuit.

GIRARD LIFE INS., ANNUITY AND TRUST CO. *et al.*, Appellants,
94 *vs.*
W. H. COOPER *et al.*
No. 109. October Term, 1891.

The clerk will enter my appearance as counsel for the appellees.
A. G. MOSELEY.

Endorsed: U. S. circuit court of appeals, eighth circuit. 1891, October term. No. 109. Girard Life Ins., Annuity and Trust Co., appellants, *vs.* W. H. Cooper *et al.* Appearance. Filed Jun- 20, 1892. John D. Jordan, clerk. A. G. Moseley, Denison, Tex., counsel for appellees.

And on twentieth day of June, A. D. 1892, in the record of the proceedings of said circuit court of appeals is an entry in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, October Term, 1891.

GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY, Trustee, *et al.*, Appellants,
vs.
W. H. COOPER *et al.*, Appellees.
No. 109.

Appeal from the United States court in the Indian Territory.

MONDAY, *June* 20, 1892.

This cause having been called for hearing, argument was commenced by Mr. J. W. McLoud, counsel for Girard Life Insurance, Annuity and Trust Company, trustee, and by Mr. S. A. Gilbert,

counsel for Francis I. Gowen, acting receiver, etc., appellants; continued by Mr. L. P. Sandels and Mr. A. G. Moseley, for appellees, and concluded by Mr. Samuel Dickson, in behalf of appellants.

Thereupon this cause was submitted to the court upon the transcript of the record from the said United States court and the briefs of counsel herein.

95 And on the fifth day of July, A. D. 1892, an opinion of said United States circuit court of appeals was filed in said cause in the following words, to wit:

96 United States Circuit Court of Appeals, Eighth Circuit, October Term, A. D. 1891.

GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY *et al.*, Appellants, *vs.* W. H. COOPER and JAMES COOPER, Composing the Firm of W. H. Cooper & Son, Appellees.	No. 109. Appeal from the United States Court in the Indian Territory.

Mr. J. W. McLoud, Mr. S. A. Gilbert, Mr. Samuel Dickson, for appellants.

Mr. L. P. Sandels, Mr. A. G. Moseley, for appellees.

Before Caldwell and Sanborn, circuit judges, and Shiras, district judge.

SHIRAS, *District Judge:*

The Choctaw Coal and Railway Company, a corporation created under the laws of the State of Minnesota, with the right, among other things, to build and operate railways and to own and develop coal mines, was authorized by the acts of Congress, approved February 18th, 1888, and February 13, 1889, to construct a railway within the Indian Territory. In connection with the building and operation of the line of railroad and the development of its mining interests the company, in May, 1890, undertook the erection at South McAlester, in the Indian Territory, of a building to be used as a hotel and for offices for the company, and entered into a contract with W. H. Cooper & Son for the furnishing of the greater part of the work and material needed in the erection of the building, which was called the Kali-Inla hotel. For the purpose of securing the holding of terms of the United States court at South McAlester, which it was believed would add to the business of the railway and otherwise benefit the company, it was promised on behalf of
97 the company that if Congress would provide for holding court at South McAlester accommodations for the court and its officers would be furnished free of cost to the United States, and Congress accepting the proposition thus made designated South McAlester as one of the points for holding court within the Territory. The company thereupon determined to appropriate part of

the building in process of erection to the use of the court and its officers.

In December, 1890, a bill in equity was filed in the second judicial division of the United States court for the Indian Territory, wherein Langhorne Wister and the Girard Life Insurance, Annuity and Trust Company, of Philadelphia, were complainants and The Choctaw Coal and Railway Company was defendant, one of the objects of the suit being to foreclose a mortgage given by the company upon its property to the Girard Company as trustee. On the 8th day of January, 1891, E. D. Chadick and Francis I. Gowen were appointed by the court receivers of the property of the company, with authority to carry on the business of the corporation in all its branches, and to appoint such agents as the company had done and as were necessary in the proper conduct of the business. On the 3d day of June, 1891, the receivers notified the contractors, Cooper & Son, to stop work upon the building known as the Kali-Inla hotel, such notification being in writing and reading as follows:

"SOUTH MCALESTER, IND. TER., *June 3rd*, 1891.

Messrs. W. H. Cooper & Son, South McAlester, Indian Territory.

GENTLEMEN: Under direction of the court we notify you to stop all work on the Kali-Inla hotel from this date and make out your bill for the work done up to and including today.

We will then furnish you with designs and directions as to the work to be done and you will name a gross sum for the performance of the same, which we will submit to the court for their approval or disapproval.

Yours truly,

EDWIN D. CHADICK,
FRANCIS I. GOWEN,
Receivers Choctaw Coal & R'y —."

Upon receipt of this letter Cooper & Son ceased work upon the building and made out a bill or statement of the sum then due them, which was approved by the auditor of the receivers. On or about June 7th H. W. Cox, who acted under the receivers as a supervising architect, furnished to Cooper & Son the details and specifications of the work required to be done to fit the building for occupancy by the court and the officers of the company, and Cooper & Son agreed to do the work thus called for for the sum of $10,250, and on the 7th day of July, 1891, a contract in writing was drawn up whereby Cooper & Son agreed to do the work and furnish the materials called for by the specifications prepared by the architect, and the receivers agreed to pay therefor the sum of $10,250. This contract was signed by Cooper & Son and by H. W. Cox, as supervising architect, and the contractors proceeded with the work therein called for with the full knowledge and approval of E. D. Chadick, the receiver, who then had immediate charge and supervision of the work being done upon the railway line. It also appears
98 that the plans and specifications in question had been submitted to the judge of the court having charge of the trust,

and the same were approved by him, although no record entry of such approval was made at the time.

Upon the completion of the building, according to the plans prepared by the architect, possession of the same was surrendered by the contractors, and it has since been used and occupied by the court and by the officers of the company and of the receivers. Cooper & Son made out their bills for the sums due them for work done since June 3, 1891, which were certified as correct by the architect having supervision of the work done in remodeling the hotel building. For the purpose of procuring payment of the sums claimed to be due them, the contractors filed a petition in the foreclosure proceedings, setting forth the facts and praying for an order upon the receivers directing them to make payment of the sums claimed to be due, and further praying that a lien in their favor be established upon the building and for other relief, to which petition Francis I. Gowen, as receiver, and The Girard Trust Company, as trustees, filed answers, and thereupon the court entered an order directing "that the claim of W. H. Cooper & Son be referred to the master to take testimony thereon and to ascertain the amount justly and equitably due as the true value of the work done and materials furnished by them upon and for the Kali-Inla Hotel building at South McAlester, and that receivers' certificates bearing 7 per cent. interest be issued and delivered to them for one-third of the amount so found to be due, and to sell and deliver in settlement thereof lumber at the market price thereof for one-third of said amount, and the balance in cash to be borrowed on certificates as hereafter authorized."

A hearing was had before the master, at which counsel for Receiver Gowen sought to introduce evidence on the point of the actual value of the work and materials furnished by Cooper & Son in the erection of the Kali-Inla Hotel building, but it was held by the master that as the evidence showed that the work had been done under a contract, the question was whether the contract had been complied with; that until the existence of the contract was disproved, it was useless to offer evidence save upon the point whether the work had been done and the materials had been furnished in accordance with the terms of the contract relied on, and upon these points, after hearing the evidence adduced by both parties, the master found as matters of fact that Cooper & Son had done the work and furnished the materials used in said building after June 3, 1891, in reliance upon a contract entered into with them by the agents of the receivers, and with their knowledge and approval; that the work done and materials furnished were in accordance with the plans and specifications approved by the receivers and the court; that the work so done had been delivered to the receivers; that there was due to Cooper & Son the contract price of $10,250, and the further sum of $842.74 for extra work done under a provision in the contract upon said building; that there was due for other work performed by the contractors a sum sufficient to make the entire amount due, after allowing all credits, the sum of $14,919.37. Exceptions were filed to the findings and report of the master, but the court on the 19th of January, 1892, affirmed the same, and entered

a judgment in favor of Cooper & Son for $14,749.45, to re-
99 verse which the trust company and Gowen, receiver, have brought the case by appeal to this court.

The first point made on behalf of appellants is that the order of the court made at Ardmore October 13, 1891, referring Cooper & Son's claims to the master, contemplated an investigation of the entire cost of the hotel building, to the end that the contractors should only be paid the true value of the work done and materials furnished by them in carrying on the work, and therefore the master erred in refusing to hear evidence on this point, and in confining the examination to the questions whether the work and materials were furnished under a contract binding upon the receivers and in accordance with its terms. There can be no doubt that the language of the order is susceptible of the construction claimed for it; but upon exceptions to the master's report, the court granting the order ruled that it was not intended to bear so broad a construction, and this court would not be justified in holding the contrary, unless it was made clear that injustice has resulted therefrom. In fact, the rights of the parties are dependent upon the questions heard and determined by the master, the primary one being whether Cooper & Son furnished the work and material used in the hotel building pursuant to contracts binding upon the receivers. If Cooper & Son were not acting under a contract, then evidence of the value of the work and materials furnished by them would be pertinent; but if they were acting under a contract, valid and bind- upon the receivers, then, as the master held, the question would be whether the work done and materials furnished met the requirements of the contract, in which event Cooper & Son would be entitled to the contract price.

But one conclusion is justified by the evidence on the point whether Cooper & Son were acting under a contract fixing the obligations of the parties.

In the letter of June 3, 1891, addressed to Cooper & Son and signed by both receivers, the former were directed to stop work on the hotel building and to make out their bill up to and including June 3. This was done and the account rendered was duly certified to by the architect and approved by the auditor of the receivers. The letter of June 3 further notifies the contractors that "We will then furnish you with designs and directions as to the work to be done, and you will name a gross sum for the performance of the same, which we will submit to the court for their approval or disapproval."

In a few days after the date of this letter the architect employed by the receivers furnished plans and specifications for the work to be done in remodeling the first and second floors of the building for court purposes and for the railway offices, and the same were sent by Receiver Chadick to Muscogee for the examination of the court, and being approved the receiver was directed to proceed with the work. Thereupon the following letter was addressed to Cooper & Son:

"SOUTH MCALESTER, IND. TER., *June 23d*, 1891.

Messrs. W. H. Cooper & Son, South McAlester.

GENTLEMEN: We have been advised by Major Willian Nelson, master, of the following order of the United States court:

'You are hereby directed to finish up court-room and all the offices on lower floor of hotel building, and also such rooms on second floor as may be necessary,' in accordance with estimates to be hereinafter furnished.

Yours truly, EDWIN D. CHADICK,
For Receivers."

On June 24th, 1891, Cooper & Son answered this letter as follows:

"JUNE 24TH, 1891.

E. D. Chadick, Esq., receiver C. C. & R'y Co.

DEAR SIR: We will furnish all material and complete according to plans and specifications that part of the west half of the hotel building to be used as U. S. court apartments for the sum of seven thousand nine hundred and seventy-eight dollars; also the east part of said building to be used as R. R. offices and auditor's and bank department, as per plans and specifications, for the sum of twenty-two hundred and seventy-two dollars, or both for ten thousand two hundred and fifty dollars. The company has on hand material to the value of $2,500, which it can furnish and deduct same from above amount.

Respectfully, W. H. COOPER & SON."

Chadick testified that the receivers accepted the bid thus made; that he could not say that a formal letter of acceptance was written, but it was his impression that he did write a letter in regard to it; that the architect prepared a formal contract in writing with the plans and specifications annexed, but that the same was never signed by the receivers; that Cooper & Son proceeded with the work, relying upon the contract agreed upon, and completed the work according to the plans and specifications furnished them.

Mr. Gowen testified that he did not know of the letter of June 24, 1891, in which Cooper & Son stated the price for which they would undertake the work until toward the end of August; that he knew and saw that work was going on upon the court-rooms and offices; that he assumed that Cooper & Son were going on with the work with Mr. Chadick's concurrence without any regard to the directions given in the letter of June 3, 1891, and without furnishing any estimate or making any contract after due authority obtained from the court; that he made no protest at the time because he understood the work had to be done, and he felt confident when it came to paying for it the court would take care that Cooper & Son would not be allowed any excessive sum.

Thus the evidence shows that the receivers notified Cooper & Son that plans and specifications of the work to be done in remodeling the building would be prepared, upon which they would be asked

to state the gross sum for which they would do the work according to the plans submitted. The plans were prepared and approved by the court, of which notice was given to Cooper & Son, who thereupon stated in writing the sum for which they would undertake the work; that Chadick, who up to that time had been the receiver in active charge of the work in the Indian Territory, accepted the bid made and directed Cooper & Son to proceed with the work; that Receiver Gowen knew that the work was being done, but made no objection thereto; that Cooper & Son commenced and completed the work called for by the plans and specifications furnished them in the belief
101 that they were to be paid the price stated by them in their letter of June 24, 1891. These facts entirely justify the finding of the master that Cooper & Son in remodeling the building according to the plans furnished them were acting under a contract binding upon the receivers. The fact that the formal written contract prepared by the architect of the receivers was not signed by them does not show that an agreement had not been reached.

When the plans and specifications were furnished by the receivers to Cooper & Son, and the latter had stated the gross sum for which they would perform the work called for, the terms of the proposed contract were made plain, and when Cooper & Son were directed to proceed with the work called for by the plans, the contract between the parties was closed and the preparation and signing of a formal writing would only have called into existence additional evidence of the fact that the parties had contracted for the performance of the work included within the specifications for the price stated in the letter written by Cooper & Son under date of June 24, 1891. It must, therefore, be held that the work done and materials furnished in carrying out the plans and specifications furnished to Cooper & Son in June, 1891, were so done and furnished under a contract binding upon the receivers, which fixed the price to be paid therefor. The same is true of the work done up to and including June 3, 1891. The evidence shows that when the receivers were appointed Cooper & Son were engaged in the erection of the building under a written contract dated May 23, 1890. The receivers took no steps to terminate this contract until June 3, 1891, when the letter of that date was written, directing the cessation of work, and under the terms of that letter, as applied to the existing facts, it must be held that the contractors are entitled to demand the contract price for the work done after the receivers were appointed and up to and including June 3, 1891. The evidence shows, and the contrary is not claimed by appellants, that the contractors fulfilled the requirements of the plans and specifications under which they undertook the work performed by them, and therefore they have shown themselves entitled to the contract price for the work done, which is all that the decree appealed from awards the appellees.

Exception is also taken to the decree in that it directs that payment must be made on or before February 15, 1892, one-third to be paid in receivers' certificates, one-third in lumber and one-third in cash, it being urged that thereby an undue preference is awarded appellees over other creditors entitled to payment from the funds

under control of the receivers. The general rule is that equality is equity among the creditors of a receiver, who is the representative of the court having charge of the property that is being administered upon, and therefore, unless there is good and sufficient reason to the contrary, proportionate payments should be made to all creditors entitled to share in the common fund, and this is especially true if there is reason to fear that the fund available may not be sufficient to meet all demands in full. We are not sufficiently advised by the record of the facts in this case to determine whether the decree should or not be modified in this particular. It may be that the amount of funds under control of the receivers and the equities of the appellees, as known to the court having im-
102 mediate charge of the trust property, were such as to justify the order made in this particular. As the time for payment fixed in the decree has already passed a new order in this particular becomes necessary, which should be made by the court below, and in the making of which due regard should be had to the equities and rights of other creditors as the same may be made to appear before the court.

The decree appealed from is therefore affirmed at cost of appellants, in so far as it awards judgment for the sum therein named in favor of W. H. Cooper & Son, and the cause is remanded to the court below with instructions to enter an order directing the mode and time of payment, such as the court may be advised is required by the equities of the case.

Filed July 5, 1892.
A true copy.
Attest: ——— ———,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

103 And on the fifth day of July, A. D. 1892, in the record of the proceedings of said United States circuit court of appeals is a decree in said cause in the words and figures following, to wit:

United States Circuit Court of Appeals, Eighth Circuit, October Term, 1891.

GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY, Trustee, and Francis I. Gowen, Acting Receiver of the Choctaw Coal and Railway Company, Appellants,
vs.
W. H. COOPER and JAMES COOPER, Composing Firm of W. H. Cooper and Son, Appellees.
} No. 109.

Appeal from the United States court in the Indian Territory.

TUESDAY, *July* 5, 1892.

This cause came on to be heard on the transcript of the record from the United States court in the Indian Territory and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said United States court in this cause be, and the same is hereby, affirmed, with costs, in so far as it awards judgment for the sum therein named in favor of W. H. Cooper and Son, and that said W. H. Cooper and James Cooper, composing the firm of W. H. Cooper and Son, recover against the Girard Life Insurance, Annuity and Trust Company, trustee, and Francis I. Gowen, acting receiver of the Choctaw Coal and Railway Company, the sum of twenty dollars for their costs herein, and have execution therefor.

It is further ordered that this cause be, and the same is hereby, remanded to the said United States court, with direction to enter an order directing the mode and time of payment, such as the
104 court may be advised is required by the equitees of the case, in conformity with the opinion of this court.

And on the twenty-ninth day of August, A. D. 1892, a petition for allowance of appeal was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

In the United States Circuit Court of Appeals, Eighth Circuit.

THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY, Trustee, and Francis I. Gowen, Acting Receiver of Choctaw Coal and Railway Company, Appellants,
vs.
W. H. COOPER and JAMES COOPER, Composing the Firm of W. H. Cooper & Son, Appellees.
} No. 109.

Petition for Appeal to the United States Supreme Court.

The above-named appellants, considering themselves aggrieved by the judgment and decree of the said United States circuit court of appeals entered on the 5th day of July, 1892, in the above-entitled cause and proceedings, doth hereby appeal from said judgment and decree to the Supreme Court of the United States, and they pray that this their appeal be allowed, and that a transcript of the record and proceedings and papers upon which said appeal was made, duly authenticated, may be sent to the Supreme Court of the United States.

J. W. McLOUD &
S. A. GILBERT,
Attorneys and Solicitors for Appellants.

105 SAMUEL DICKSON, *Of Counsel.*

And now, to wit, on this 27th day of August, 1892, it is ordered that said appeal be allowed as prayed for.

HENRY C. CALDWELL,
Judge of the United States Circuit Court of Appeals, Eighth Circuit.

Endorsed: U. S. circuit court of appeals, eighth circuit. 1891, October term. No. 109. Girard Life Ins., Annuity and Trust Co. *et al.*, appellants, *vs.* W. H. Cooper *et al.* Petition for allowance of appeal to Supreme Court of the United States. Filed Aug. 29, 1892. John D. Jordan, clerk.

And on the twenty-ninth day of August, A. D. 1892, an order allowing appeal was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

In the United States Circuit Court of Appeals, Eighth Circuit.

THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST Company, Trustee, and Francis I. Gowen, Acting Receiver of Choctaw Coal and Railway Company, Appellants,
vs.
W. H. COOPER and JAMES COOPER, Composing Firm of W. H. Cooper & Son, Appellees.
} No. 109.

106 *Order Granting Appeal to United States Supreme Court.*

This matter coming on to be heard on the petition of the appellants for an appeal of the above entitled cause to the Supreme Court of the United States, *and* said appeal is hereby allowed as prayed for, and, the appellants having given a supersedeas bond, which has been approved, all proceedings on said judgment are hereby stayed until the final determination of this appeal.

Dated this 27th day of August, 1892.

HENRY C. CALDWELL,
Judge of the United States Circuit Court of Appeals, Eighth Circuit.

Endorsed: U. S. circuit court of appeals, eighth circuit. 1891, October term. No. 109. Girard Life Ins., Annuity and Trust Co. *et al.*, appellants, *vs.* W. H. Cooper *et al.* Order allowing appeal to Supreme Court U. S. Filed Aug. 29, 1892. John D. Jordan, clerk.

And on the twenty-ninth day of August, A. D. 1892, an assignment of errors was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

In the United States Circuit Court of Appeals, Eighth Circuit.

107 THE GIRARD LIFE INSURANCE, ANNUITY AND Trust Company, Trustee, and Francis I. Gowen, Acting Receiver of Choctaw Coal and Railway Company, Appellants,
vs.
W. H. COOPER and JAMES COOPER, Composing Firm of W. H. Cooper & Son, Appellees.
} No. 109.

Assignment of Errors.

Afterwards, to wit, on the 24th day of August, 1892, came the said appellants, by their attorneys and solicitors, J. W. McCloud, S. A. Gilbert, and Samuel Dickson, and say that in the record and proceedings in the above-entitled cause in the United States circuit court of appeals there is manifest error, in this:

I.

That the said United States circuit court of appeals erred in holding that there was a contract between the appellees, Cooper & Son, and the receivers of the Choctaw Coal and Railway Company that was binding upon the receivers for then work done by said Cooper & Son prior to June 3rd, 1891, the receivership of said company having commenced December 19th, 1890, and no order of court ever having been made for said work.

II.

The said United States circuit court of appeals erred in holding that there was a contract between the receivers of said company and said Cooper & Son that was binding upon said receivers for the work done after June 3rd, 1891, and the court erred in holding that the pretended contract of July 7th, 1892, was valid and binding upon the receivers, the same never having been signed by
108 either party and no order of court ever having been made authorizing the same.

III.

The said United States circuit court of appeals erred in holding that said receivers were bound to pay the amount named in said pretended contract of July 7th, 1891, without regard to the value of the work done and materials furnished in said pretended contract.

IV.

The said United States circuit court of appeals erred in affirming the decision of the United States court in the Indian Territory of January 19th, 1892, in said cause for the following reasons:

(*a.*) Because the master refused to admit testimony as to the true value of the work done and material furnished by said Cooper &

Son upon said Kali-Inla Hotel building, as he was directed to do by the order of said court of October 13th, 1891.

(*b.*) Because said master erred in confining said investigation to the question as to whether there were contracts between the receivers and said Cooper and Son for said work and in finding that there were such contracts and in holding that the receivers were bound to pay the amounts named therein.

(*c.*) Because said master erred in holding that certain vouchers made out for work done prior to June 3rd, 1891, and not signed or approved by either receiver were of the nature of accounts stated and were binding upon the receivers and could not be impeached except for fraud or mistake.

109 (*d.*) Because said master erred in holding that one H. W. Cox had authority to bind the receivers by his approval of vouchers and estimates of work done.

(*e.*) Because said master erred in finding that the receivers had full knowledge that Cooper & Son were doing work and furnishing material on said Kali-Inla Hotel building in reliance on said pretended contract of July 7th, 1891, and erred in finding that the receivers encouraged and countenanced said work under said contract.

(*f.*) Because said master erred in failing to find and report the amount justly and equitable due the said Cooper & Son as the true value of the work done and materials furnished upon said building by said Cooper & Son, as he was directed to do by said order of said court of October 13th, 1891.

V.

Said United States circuit court of appeals erred in affirming the decision of the United States court in the Indian Territory because said court refused to hear any exceptions to the report of the special master filed in said cause, and on the 19th day of January, 1892, sustained a motion striking said exceptions from the files and refusing to hear the same.

VI.

Said United States circuit court of appeals erred in requiring appellants to pay the full amount named in said pretended contract of July 7th, 1891, and in paying the contract price for the work done prior to June 3rd, 1891, under said pretended contract of

110 May 23rd, 1890, for the reason that the order of said court of October 13th, 1891, ordered the master to take testimony to ascertain the amount justly and equitably due said Cooper & Son, based upon the true value of the work done and materials furnished by them, which order contemplated an investigation of the entire cost of said building and intended that the receivers should only pay the amount finally found to be due as the true value of the work done and materials furnished, without regard to any contract or to any contract prices.

VII.

Said United States circuit court of appeals erred in finding that said contract of July 7th, 1891, or the plans and specifications attached thereto were in any way approved by the court, and in holding that said pretended contract was in any way authorized by the court.

VIII.

Said United States circuit court of appeals erred in considering the question of contract between the Choctaw Coal and Railway Company and the United States in regard to the location of the United States court at South McAlester, I. T., for the reason that same was immaterial and irrelevant to the question before the court, which question was not whether the Choctaw Coal and Railway Company was to establish court quarters at South McAlester, but the question before the court was whether the receivers of said company should be required to pay more than the same were worth. If such a contract was made it might be binding upon the company, but could not be binding upon the receivers.

111

IX.

The said United States circuit court of appeals erred in affirming the opinion of the said United States court in the Indian Territory because said court erred in making said Cooper & Son preferred creditors and requiring them to be paid in advance of other creditors of the trust estate in the hands of the receivers.

X.

The said United States circuit court of appeals in affirming the decision of the United States court in the Indian Territory in said cause disregarded the plain rules and principles of law governing receivers and the administration of trust estates and treated the pretended contracts of May 23rd, 1890, and July 7th, 1891, as though they were contracts with the company and hence binding on the receivers.

Wherefore appellants pray that said final order and judgment of the United States circuit court of appeals for the eighth circuit of July 5th, 1892, rendered in said cause, be reversed and set aside and held for nought, and that said decision be reversed and said cause remanded for further proceedings in accordance with law and in accordance with the order of the United States court in the Indian Territory of October 13th, 1891.

XI.

The court erred in holding in effect that receivers can make large, exhorbitant contracts without authority of court before so doing.

J. W. McLOUD,
S. A. GILBERT &
SAMUEL DICKSON,
Attorneys and Solicitors for Appellants.

112 Endorsed: U. S. circuit court of appeals, eighth circuit; 189–, October term. No. 109. Girard Life Insurance, Annuity & Trust Co. *et al.*, appellants, *vs.* W. H. Cooper *et al.* Assignment of errors. Filed Aug. 29, 1892. John D. Jordan, clerk.

And on the twenty-ninth day of August, A. D. 1892, an appeal and supersedeas bond was filed in the clerk's office of said circuit court of appeals in said cause in the words and figures following:

In the United States Circuit Court of Appeals, Eighth Circuit.

THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY, Trustee, and Francis I. Gowen, Acting Receiver of Choctaw Coal and Railway Company, Appellants,
vs.
W. H. COOPER and JAMES COOPER, Composing Firm of W. H. Cooper & Son, Appellees.
} No. 109.

Supersedeas Bond.

Know all men by these presents that we, The Girard Life Insurance, Annuity and Trust Company, trustee, and Francis I. Gowen, acting receiver of Choctaw Coal and Railway Company, as principals, and J. J. McAlester, as surety, are held and firmly bound unto W. H. Cooper and James Cooper, composing firm of W. H. Cooper & Son, in the full and just sum of fifteen thousand dollars ($15,000.00), to be paid to the said W. H. Cooper and Son, their successors and assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

113 Sealed with our seals and dated this 12th day of August, in the year of our Lord one thousand eight hundred and ninety-two.

Whereas lately, at a session of the United States circuit court of appeals, in the eighth circuit, in a suit pending in said court between The Girard Life Insurance, Annuity and Trust Company, trustee, and Francis I. Gowen, acting receiver of Choctaw Coal and Railway Company, *vs.* W. H. Cooper and James Cooper, composing firm of W. H. Cooper & Son, a final decree and judgment was rendered against said The Girard Life Insurance, Annuity and Trust Company, trustee, and Francis I. Gowen, acting receiver of Choctaw Coal and Railway Company, appellants, affirming the final judgment of the United States court in the Indian Territory in said cause, and the said appellants having obtained the allowance of an appeal to the Supreme Court of the United States from the said judgment and decree and filed a copy thereof in the clerk's office in the United States circuit court of appeals at St. Louis, Missouri, to reverse the said judgment and decree in the aforesaid suit, and a citation directed to the said W. H. Cooper and James Cooper, composing the firm of W. H. Cooper & Son, citing and admonishing them to be and appear at the Supreme Court of the United States

to be holden at Washington on or before thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said appellants prosecute said allowance of appeal to effect and answer all costs and damages if they fail to make said appeal and plea good, then the above obligation to be void; otherwise to remain in full force and virtue.

114 THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY, *Trustee, and*
FRANCIS I. GOWEN,
Acting Receiver of Choctaw Coal and Railway Company,
By J. W. McLOUD, *Their Attorney.* [SEAL.]
JAS. J. McALESTER.
FRANCIS I. GOWEN, *Acting Receiver,*
By S. A. GILBERT, *Att'y.* [SEAL.]

SOUTH McALESTER,
Tobucksey County, Choctaw Nation, Indian Territory, } *ss:*

On this 12th day of August, 1892, personally appeared before me the Girard Life Insurance, Annuity and Trust Company of Philadelphia, trustee, by J. W. McLoud, its attorney, and Francis I. Gowen, acting receiver of the Choctaw Coal and Railway Company, by S. A. Gilbert, and J. J. McAlester, in person, and known to me to be the parties who signed and sealed the foregoing bond, and each for himself severally acknowledged that he executed the same free and voluntarily for the purposes and uses therein expressed.

Subscribed and sworn to before me this twelfth day of August, 1892. Witness my hand and seal.

[SEAL.]

ALLEN R. BOYD,
Notary Public for the I. T.

The within and foregoing supersedeas and cost bond and the sureties thereon are hereby approved by me this 27 day of August, 1892.

115 HENRY C. CALDWELL,
Judge of the United States Circuit Court of Appeals, Eighth Circuit.

Endorsed: U. S. circuit court of appeals, eighth circuit; 1891, October term. No. 109. Girard Life Ins., Annuity and Trust Co. *et al.*, appellants, *vs.* W. H. Cooper *et al.* Appeal and supersedeas bond. Filed Aug. 29, 1892. John D. Jordan, clerk.

And on the twenty-ninth day of August, A. D. 1892, a citation on appeal was filed in the clerk's office of said circuit court of appeals in said cause, the original of which is hereto attached and herewith returned:

116 The United States of America to W. H. Cooper and James Cooper, composing the firm of W. H. Cooper and Son, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at the city of Washington, D. C., thirty days from and after the day this citation bears date, pursuant to an appeal allowed and filed in the clerk's office of the United States circuit court of appeals for the eighth circuit, wherein The Girard Life Insurance, Annuity and Trust Company, trustee, and Francis I. Gowen, acting receiver of the Choctaw Coal and Railway Company, are appellants and you are appellees, to show cause, if any there be, why the decree rendered against the said appellants, as in said appeal mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Henry C. Caldwell, judge of the United States circuit court of appeals for the eighth circuit, this twenty-seventh day of August, in the year of our Lord one thousand eight hundred and ninety-two.

HENRY C. CALDWELL,
Judge of the United States Circuit Court of Appeals for the Eighth Circuit.

116½ [Endorsed:] No. —. United States circuit court of appeals, eighth circuit. Girard Life Insurance, Annuity and Trust Co. *et al.*, appellants, *vs.* W. H. Cooper and Son. Citation on appeal. Filed Aug. 29, 1892. John D. Jordan, clerk.

On this 16th day of September, 1892, we, as attorneys of record of W. H. Cooper and Son in the within-entitled cause, do hereby acknowledge receipt of a true and correct copy of the within citation.

L. P. SANDELS.
A. G. MOSELEY.

117 United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, clerk of the United States circuit court of appeals, eighth circuit, do hereby certify that the foregoing pages, numbered from one to —, inclusive, contain full, true, and complete copies of all pleadings, proceedings, and record entries, including the opinion of said circuit court of appeals, in the case of The Girard Life Insurance, Annuity and Trust Company, trustee, and Francis I. Gowen, acting receiver of Choctaw Coal and Railway Company, appellants, *vs.* W. H. Cooper and James Cooper, composing the firm of W. H. Cooper & Son, appellees, No. 109, October term, 1891, as the same remain upon the files and records of said United States circuit court of appeals. I further certify that the original citation in said cause is hereto attached and herewith returned.

Seal United States Circuit Court of Appeals, Eighth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of St. Louis, Missouri, this 13th of September, A. D. 1892.

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

Endorsed on cover: Case No. 15,147. United States circuit court of appeals, 8th circuit. Term No., 164. The Girard Life Insurance, Annuity & Trust Company, trustee, and Francis I. Gowen, acting receiver of the Choctaw Coal & Railway Co., appellants, *vs.* W. H. Cooper and James Cooper, composing the firm of W. H. Cooper & Son. Filed September 24, 1892.

Office Supreme Court U. S.
FILED.
DEC-10 1895
JAMES H. McKENNEY,
CLERK.

No. 164. October Term, 1895.

Supreme Court of the United States.

The Girard Life Insurance, Annuity and Trust Company, Trustee, and Francis I. Gowen, Acting Receiver of Choctaw Coal and Railway Company, Appellants,

vs.

W. H. Cooper and James Cooper, composing the firm of W. H. Cooper & Son.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLANTS.

J. W. McLEOD,
SAMUEL DICKSON,
Counsel for Appellants.

Allen, Lane & Scott, Prs., Phila.

SUPREME COURT OF THE UNITED STATES.

The Girard Life Insurance, Annuity and Trust Company, trustee, and Francis I. Gowen, Acting Receiver of Choctaw Coal and Railway Company, Appellants,	October Term, 1895.
vs.	No. 164.
W. H. Cooper and James Cooper, composing the firm of W. H. Cooper & Son.	

BRIEF OF APPELLANTS.

STATEMENT.

This case originated in the United States Court in the Indian Territory, and was appealed to the United States Circuit Court of Appeals for the Eighth Circuit, and then appealed to this court. It grew out of the receivership of the Choctaw Coal and Railway Company. On the 19th of December, 1890, at chambers, the judge of the United States Court in the Indian Territory made an order appointing Edwin D. Chadick, Alan H. Reed, S. L. Shellenberger Receivers of said company. (Record, 37.) Said Receivers failing to qualify, said court on the eighth day of January, 1891, in open court, made an order appointing Edwin D. Chadick and Francis I. Gowen co-Receivers of said company, with all of the powers of said order of December 19th. (Record, 40.) On the same day said Receivers qualified and gave bonds, as required by said order. Said Receivers continued as co-Receivers until August 28th, 1891, when the judge of said court, at chambers, made an order giving said Chadick a

leave of absence for one year, and in the interim vesting all of the powers of both Receivers in Francis I. Gowen for the period named. (Record, 42.) At the expiration of this time said order was continued from time to time until in June, 1893, upon a petition for the removal of Mr. Chadick being filed, he resigned, and James W. Throckmorton, of Texas, was appointed co-Receiver with Mr. Gowen, and they continued as co-Receivers until the death of Governor Throckmorton, in 1894, after which Mr. Gowen continued as sole Receiver until the company was reorganized by an Act of Congress approved August 24th, 1894. But the questions in controversy in this action have to do with only the first year of the receivership, during the first eight months of which Mr. Gowen and Mr. Chadick were co-Receivers, and during the remainder of which Mr. Gowen was sole Receiver.

On the 30th of September, 1891, Paul Waples and others, who claimed to be creditors of the Receivers, with whom were joined W. H. Cooper & Son, served a notice on said Gowen that on the 7th of October, 1891, they would make application to the judge of said court, at chambers, in Ardmore, Indian Territory, for the appointment of an additional or third Receiver (record, 42), and on the same day they filed with the clerk of said court their petition for that purpose, which they entitled a "motion." (Record, 43.) On the seventh day of October, 1891, said Gowen filed his answer to said motion. (Record, 45.) On the 8th of October the said Cooper & Son filed a separate petition (record, 1), in which they claimed, *inter alia*, $25,563.40 "for labor performed and material furnished in the construction of the Kali-Inla Hotel, which is situated on the northeast corner of First and Front Streets of South McAlester, Choctaw Nation, Indian Territory, said situation being more specifically described as lots 23, 24, 25, and 26 of block 48 of said town" (record, 3), which is the claim in controversy in this action, all other questions in said petition having been afterwards eliminated. On the thirteenth day of October, 1891, at Ardmore, Indian Territory, said court made an order in which, *inter alia*, it was ordered "that the claim of W. H. Cooper & Son be referred

to the Master to take testimony thereon, and to ascertain the amount justly and equitably due as the true value of the work done and materials furnished by them upon and for the Kali-Inla Hotel building at South McAlester." On the 24th of October, 1891, the said Gowen filed his answer to the petition of said Cooper & Son, in which, as to the claim of said Cooper & Son for work on said Kali-Inla building, it was denied that said work was done or materials furnished at the instance and request of the Receivers, and denied that the amounts charged therefor were the reasonable value of the materials furnished and labor performed, and denied that the Receivers ever gave the petitioners any recognition of said claim of indebtedness by voucher or otherwise, and alleged that said work was done and materials furnished without any contract or agreement with the Receivers and without any order of court, but upon a verbal agreement with the said Chadick personally, without the knowledge or consent of his co-Receiver Gowen, and without any authority or order of the court; that said work was not necessary for the preservation of the estate or the prosecution of the business in the hands of the Receiver, and that said claim of indebtedness was not a proper charge against the funds and property in the hands of the Receiver. On the same day the Girard Life Insurance, Annuity and Trust Company, as trustee of the bondholders of the Choctaw Coal and Railway Company, filed its answer to the complaint of said Cooper & Son (record, 23), which answer contained substantially the same defense as that set up by Receiver Gowen, but in addition thereto alleged "that nearly all of said indebtedness of $31,913.09 claimed by the petitioners, with the exception of the amount claimed for said drug store and hall, is charged for work done and material furnished on said Kali-Inla Hotel building, which has cost, up to the present time, upwards of $60,000, and is still incomplete and almost entirely unfit for use; that there are no flues or chimneys in said building, and no provision for the heating of said building in any way; that the two upper stories of said building are entirely unfinished, and the whole interior of the two lower stories is entirely unfinished; that

said building is cut up into small rooms and has been poorly constructed, and will require the expenditure of many thousands of dollars to make the same habitable or to put it in a condition where it will be of much use; that there has been a most extravagant waste of money and material in the construction of said building thus far, and the same appears to have been built with a view of consuming material and costing money instead of with a view of being serviceable and useful; that said building is one hundred feet by one hundred and sixty feet and four stories high, and the arrangement of it is very impracticable; and the whole interior of said building is almost absolutely worthless, for the reason that the same is not and cannot be lighted so as to enable any one to live in it or transact any business therein; that said building is erected upon land to which neither said company or said Receivers have any title, but said building was erected on said land by Edwin D. Chadick as agent for Fritz Sittel, a citizen of the Choctaw Nation, and said land was supposed to belong to said Sittel as an Indian citizen, but the Supreme Court of said Choctaw Nation has since decided that the right, title, and ownership of said land was in one Henry Trauth, and that said Sittel has no right to the same."

The hearing before the Master began October 24th, and on the 16th of November the Master made his report to the court in favor of Cooper & Son. Exceptions were filed to the report, and thereupon attorneys for Cooper & Son filed motions to strike said exceptions from the record, for the reason that the findings and report of the Master were final and conclusive and could not be questioned. The court sustained the motions to strike the exceptions from the record, and rendered judgment against the Receiver on the nineteenth day of January, 1892, for the sum of $14,749.45. Motions for a rehearing and a new trial were filed, which were overruled by the court on the 29th of January, 1892. The appellants herein immediately filed a petition for an appeal, which was granted by the court upon condition that bond be given in the sum of $15,000 within ten days, and thirty days were allowed in

which to prepare and file a bill of exceptions, which was filed February 27th, 1892. A decision was rendered by the United States Circuit Court of Appeals, affirming the judgment and remanding the cause to the court below, with instructions "to enter an order directing the mode and time of payment such as the court may be advised is required by the equities of the case."

The work on the Kali-Inla building at South McAlester was commenced prior to the receivership, under (as was claimed) a contract between Cooper & Son and Edwin D. Chadick dated May 23d, 1890, which appears in the record as Exhibit G. (Page 16.) This contract was signed by W. H. Cooper & Son and by "H. W. Cox, architect for E. D. Chadick." At the beginning of the receivership Cooper & Son were settled with in full, and all work was to be stopped except such as was necessary to protect the building, and such work was only to be under the order of the court. Shortly after the beginning of the receivership a petition was presented to the court for an order authorizing a contract for the roofing of the building, in order to protect it from the weather, and such order was obtained from the court before work was commenced. (Testimony of Francis I. Gowen, record, 70.) This is the only order of court that was ever obtained for any work upon the building, and all of the further work which is in controversy in this action was done entirely without any order of the court. Cooper & Son commenced the work under the $1200 order for the roofing of the building, and when that was finished continued to work on the building without any authority, unless from Mr. Chadick personally. In June, 1891, Mr. Gowen, learning that Cooper & Son had continued working on the building, wrote Mr. Cooper the letter of June 3d, 1891, addressed to Cooper & Son, and signed by both Receivers, which letter is as follows:—

"SOUTH MCALESTER, I. T., June 3d, 1891.

"*Messrs. W. H. Cooper & Son, South McAlester, I. T.*

"GENTLEMEN:—Under direction of the court we notify you to stop all work on the Kali-Inla Hotel from this date, and

make out your bill for the work done up to and including to-day.

"We will then furnish you with designs and directions as to the work to be done, and you will name a gross sum for the performance of the same, which we will submit to the court for their approval or disapproval.

"Yours truly,

"EDWIN D. CHADICK,
"FRANCIS I. GOWEN,
"*Receivers Choctaw Coal and Railway Company.*"

(Record, 52 and 59.)

The reason for writing this letter is stated by Mr. Gowen in his testimony, on page 71, as being to put the matter in such shape that Cooper could not enter into another arrrangement without his concurrence, and without the prior approval of the court. It was claimed at the trial by Mr. Cooper that he continued this work in addition to the $1200 order, up to June 3d, under the old contract of May 23d, 1890, prior to the receivership. Mr. Gowen gives his reason for asking Mr. Cooper to submit his bill for all work done up to that date to have been in order that he might submit the same to the court and ask directions as to its payment, assuming that the court would pass upon the matter and direct the payment of such sum as would be just and proper compensation for the work done, irrespective of any contract which might have been made prior to the appointment of the Receivers. (Record, 71.)

On June 23d, 1891, without having received any bill for work already done, and without the matter having been submitted to the Receivers, and without having obtained any order of court, Mr. Chadick wrote Cooper & Son the following letter:—

"SOUTH MCALESTER, INDIAN TERRITORY, June 23d, 1891.

"*Messrs. W. H. Cooper & Son, South McAlester.*

"GENTLEMEN:—We have been advised by Maj. William Nelson, Master, of the following order of the United States Court:—

"'You are hereby directed to finish up court room, all the offices on lower floor of hotel building, and also such rooms on second floor as may be necessary,' in accordance with estimates to be hereafter furnished.

"Yours truly,

"EDWIN D. CHADICK,
"*For Receivers.*
"A. R. BOYD."

(Record, 60.)

On the next day, June 24th, a letter was written to Mr. Chadick, which was identified by him in his testimony as being received from Cooper & Son, as follows:—

"SOUTH MCALESTER, June 24th, 1891.

"*E. D. Chadick, Receiver Choctaw Coal and Railway Company.*

"DEAR SIR:—We will furnish all material and complete according to plans and specifications that part of the west half of the hotel building to be used as United States Court apartments, for the sum of $7978; also the east part of the said building, to be used as railroad offices and auditors' and bank departments, as per plans and specifications, for the sum of $2272, or both for $10,250. The company has on hand material to the value of $2500, which it can furnish and deduct same from above amount.

"Respectfully,"

(Record, 60.)

This proposition was not accepted by the Receivers, and no order of court was obtained authorizing it. But on the seventh day of July, 1891, a contract was prepared by H. W. Cox, to which were attached certain plans and specifications. The contract was not signed by any one, but the plans and specifications were signed by "H. W. Cox, supervising architect," and by W. H. Cooper & Son. (Record, 13; Exhibit E.) At the hearing the Master, who was also clerk of the court, stated that the plans and specifications were submitted to him

and to the judge of the court to see if the rooms for the court apartment suited them, and to see if they had any suggestions as to the arrangement of the rooms, but admitted that no order was ever made by the court as to the price to be paid for the work or as to the manner of payment, and that neither he nor the court knew anything about what the price for the work was. (Record, 61.) The pretended contract of July 7th was not signed by either Receiver, was not accepted or approved by either Receiver, and was not submitted to Mr. Gowen until the twenty-ninth day of August, 1891, which was the first knowledge he had that any such contract was in existence. Mr. Cooper then presented this contract to Mr. Gowen and asked him to sign it as a prerequisite to his (Cooper's) permitting the United States marshal to take possession of the rooms which had been fitted up for the court and the clerk's and Marshal's offices. At this time Mr. Cooper did not ask for any pay, and was not promised any payment, and all that he insisted upon was to have the contract signed. Mr. Gowen refused to sign the contract because the work had not been authorized by the court, and because he was not satisfied that the price named in the contract was proper and reasonable, but promised Mr. Cooper that he would undertake to ascertain whether the price named in the contract was a proper one; to this end he secured the services of a competent builder and architect and had him make a thorough examination of the building, with a view of determining the just value of the work done and materials furnished. This report showed that the charges made by Cooper for work upon this building were grossly excessive. (Record, 72.) With this knowledge, and upon the contention that the pretended contract of July 7th, 1891, was a most improvident one, and that much more had already been paid to Cooper & Son by the Choctaw Coal and Railway Company and its Receivers on this Kali-Inla building than should have been paid for all of the work done and materials furnished up to October, 1891, the order of October 13th (known as the "Ardmore order") was drawn and consented to by the Receiver and trustee of the bondholders in order that the Master

might investigate the whole cost of the building and determine the amount justly and equitably due as the true value of the work done and the materials furnished. The language of the order is that the "claim of W. H. Cooper & Son be referred to the Master to take testimony thereon, and to ascertain the *amount justly and equitably due as the true value of the work done and materials furnished by them upon and for* the Kali-Inla Hotel building at South McAlester." (Record, 49.) In compliance with this order Receiver Gowen and the trustee of the bondholders undertook to prove the true cost and value of the building without reference to any contract, but the Master refused to allow them to do so. The record upon this question is as follows :—

"Cross examination of W. H. COOPER :—

"MR. GILBERT :—Mr. Cooper, did you keep a regular set of books in your business?

"MR. COOPER :—Yes, sir.

"MR. GILBERT :—In which you showed all your expenditures for labor and material?

"MR. COOPER :—Yes, sir.

"MR. GILBERT :—Can you tell me how much you paid out for labor from the first day of May, 1890, up to the completion of this Kali-Inla Hotel building?

"(Counsel for plaintiff objects to the question, and states as his reason that all work done by Mr. Cooper on the Kali-Inla Hotel prior to and subsequent to June 3d, 1891, was done under contract, and the estimates and statements of the work having been put in the form of vouchers are in the nature of accounts stated, and can only be impeached for fraud or mistake.)

"MR. GILBERT :—I do not understand that there has been any stated account in any of these matters, and certainly not in a great part of them, nor has there been any contract proved. The object in introducing this testimony is to prove the true value of the work done and material furnished by Cooper & Son, which is what we understand the order referring this matter to your Honor means, it leaving it for you

to determine what was justly and equitably due Cooper & Son as the true value of the work.

"Objection sustained by Master, to which ruling acting Receiver Gowen and the Girard Life Insurance, Annuity and Trust Company of Philadelphia, trustee, except. Counsel for acting Receiver Gowen and the Girard Life Insurance, Annuity and Trust Company of Philadelphia, trustee, then stated to the Master that they had the testimony of two architects who had made an examination of the hotel building, whom they wished to introduce as witnesses as to the true cost of the building and the true value of the work done and material furnished in said building, and asked the Master whether the above ruling would exclude all such testimony; and if so, there would be no use of their bringing them to South McAlester, as one lived in Denison, Texas, and the other at Kansas City, Missouri; to which the Master replied: 'Here is a contract and specifications. It is claimed that this work has been done under that contract and according to the plans and specifications. If you want to introduce this evidence to prove that this work was not done in accordance with the specifications I will admit it; otherwise I will not. I will not admit any testimony as to the actual value of the work done and material furnished. I shall hold that until this contract is disproved I have no right to go into an investigation as to the value of the work. I shall hold that there was a contract, and the only question is whether that contract was complied with.'" (Record, 55; 56.)

In his report to the court the Master says that the Receiver's only defense to that part of the claim of said Cooper & Son done under the contract of July 7th, 1891, is in showing that the work performed by said Cooper & Son, and materials furnished by them, were not in accordance with the details, plans, and specifications attached to said contract. (Record, 76, top of page.) The Master entirely disregarded the language, meaning, and intent of the order referring the matter to him, and held that the receivership was liable under the con-

tract of May 23d, 1890, for all work done between January and June 3d, 1891, notwithstanding the fact that said contract was between Cooper & Son and Edwin D. Chadick personally, and was entered into nearly a year prior to the appointment of Receivers (record, bottom 53 and 54), and notwithstanding that at the time of the appointment of the Receivers a full settlement was had with Cooper & Son and all work by them ordered to be stopped, and notwithstanding the fact that the only work which the court afterwards authorized was work to the amount of $1200, in roofing the building for the purpose of protecting it from the weather. For the work done after June 3d the Master held that the receivership was liable under the pretended contract of July 7th, notwithstanding that contract was never signed by either party and never accepted by either Receiver, and never submitted to Receiver Gowen, and its existence not known to him (record, top page 53), and notwithstanding it was never authorized or approved by order of the court. It appears that as this work progressed vouchers were made out from time to time by H. W. Cox, who had been supervising architect for Edwin D. Chadick, and the Master held that these vouchers, as they were issued by the said Cox, became "accounts stated," and were binding upon the receivership, notwithstanding they were not signed or approved by either Receiver and their existence, even, was unknown to both Receivers. The Master's report in full is as follows:—

"Comes now William Nelson, hitherto appointed Master in the case of Langhorne Wister *vs.* Choctaw Coal and Railway Company and respectfully submits his report in this cause except as to the claim of W. H. Cooper & Son against said Receivers for erecting a certain building in South McAlester known as the drug store, a report of which claim will hereafter be made separately and distinct from the matters embraced in this report, and which has been continued at the special request of the attorneys of the Receivers until the twenty-fifth day of November, 1891.

" Edwin D. Chadick and Francis I. Gowen, Receivers, to W. H. Cooper & Son,

" Dr.

To voucher, April, 1891	$1,152.73
To interest on same at six per cent. from April 1st to October 13th	37.655
To voucher, May 9th	11,182.97
To interest on same at six per cent. from May 9th to October 13th	292.621
To voucher, June 3d	3,287.69
To interest on same at six per cent. from June 3d to October 13th	72.329
To voucher No. 442, May 26th	92.25
To interest on same at six per cent. from May 26th to October 13th	2.152
To voucher No. 487, June 3d (corrected)	789.12
To interest on same at six per cent. from June 3d to October 13th	17.36
To voucher No. 610, June 3d	612.00
To interest on same at six per cent. from June 3d to October 13th	13.464
To voucher No. 773, July 1st	74.95
To interest on same at six per cent. from July 1st to October 13th	1.311
To voucher No. 1020, August 1st	29.15
To interest on same at six per cent. from August 1st to October 13th	.359
To voucher No. 940, August 25th	3.45
To interest on same at six per cent. from August 25th to October 13th	.028
August 10th, lumber transportation department (not vouchered)	3.00
August 1st, three book cases	48.00
August 1st, removing safe	51.00
September 2d, lumber, motive power department	26.16
September 2d, to platforms, &c.	262.80
To contract on Kali-Inla Hotel, dated July 7th, 1891	10,250.00
To extra work and material furnished on Kali-Inla Hotel in addition to contract of above date	842.74
Total	$29,145.28

" Cr.

The above amount is entitled to a credit agreed upon before me by the respective parties in this suit of	$14,225.91
Balance due W. H. Cooper & Son, October 13th, 1891,	$14,919.37

"FINDINGS OF FACT.

"1. I find that the vouchers above mentioned are valid, and were issued in good faith by agents of the Receivers, having authority so to do; and that W. H. Cooper & Son were given credit upon the books of said company for the amounts so vouchered, and were charged with such vouchers; and that said amounts constituted and became a debt from the Receivers to W. H. Cooper & Son, due and payable upon date of issuance.

"2. I find that the contract under and by virtue of which all work was done and materials furnished upon Kali-Inla Hotel from and after June 3d, 1891, and the specifications, plans, and drawings furnished therewith, were executed, furnished, and delivered by agents of the Receivers having authority so to do, and under the special direction and approval of the Receivers themselves and of this Honorable Court.

"3. That the work performed and materials furnished were so furnished and performed by W. H. Cooper & Son under and by virtue of and in reliance upon the contract aforesaid, and that the Receivers knew that said W. H. Cooper & Son were so performing work and furnishing materials under and by virtue of said contract, and in full reliance thereon; and with such knowledge approved of the work of said Cooper & Son, and managed and directed said Cooper & Son in the progress of said work, and have now received the benefit of said work and are in the possession of said hotel.

"4. I find that said W. H. Cooper & Son did all of the work done under the contract of July 7th, 1891, in strict accordance with the details, plans, and specifications furnished them with said contract by said Receivers, and are entitled to the contract price.

"5. Further, that the extra work charged for was done under and by virtue of a provision in said contract, and at the suggestion of the supervising architect, furnished by the Receivers, and with his approval; and that the prices charged for such extra work and materials furnished are reasonable and true."

"FINDINGS OF LAW.

"1. I find, as a matter of law, that the vouchers hereinbefore mentioned are in the nature of accounts stated and having been acquiesced in by both parties cannot now be impeached by either party except through allegation and proof of fraud or mistake.

"2. I find, as a matter of law, that the Receivers having had full knowledge of the fact that W. H. Cooper & Son were doing work and furnishing materials on Kali-Inla Hotel, in reliance upon contract of July 7th, 1891, and that the Receivers having encouraged and countenanced their work thereunder and furnished them with a supervising architect to superintend the same, and that the Receivers having received and gone into possession thereof, are now estopped from denying their obligations to said Cooper & Son under said contract, and that their only defense to that part of the claim of said Cooper & Son is in showing that the work performed by said Cooper & Son and materials furnished by them were not in accordance with the details, plans, and specifications attached to said contract.

"WILLIAM NELSON,
"*Special Master.*"

(Record, 73 to 76 inclusive.)

EXCEPTIONS TO MASTER'S REPORT.

The following exceptions were filed to the Master's report:—

"*First.*—Said Nelson, Special Master, erred in refusing to admit testimony as to the true value of the work and materials furnished upon the Kali-Inla Hotel building at South McAlester, Indian Territory.

"*Second.*—Said Special Master erred in failing to find and report as required and directed by order of this Honorable Court, which order directed him to find the amount due

Cooper as the true value for the work done and material furnished on said Kali-Inla building.

"*Third.*—Said Special Master erred in finding that the pretended contract of July 7th was binding upon said Receivers and upon the property in their hands, for the following reasons:—

"(*a.*) Because Receivers have no power to bind property in their charge by exorbitant and improvident contracts, even where said contracts are signed and executed by the Receivers, and we would, had not the Master erroneously excluded the same, have proved at said hearing that said contract was improvident and exorbitant.

"(*b.*) Because said pretended contract was not signed or executed or approved by the Receivers or by their express authority.

"(*c.*) Because there is no evidence that Mr. Cox had authority to bind the Receivers, which fact was understood by W. H. Cooper and recognized by him when he insisted on having said contract signed by one of the Receivers before delivering possession of the building to the marshal and officers of the court.

"(*d.*) Because said pretended contract, unless specifically authorized by the court, was *ultra vires*, and we submit that said contract never was authorized by the court and was never submitted to the court and approved by the court.

"(*e.*) Because the letter of June 3d, from Edwin D. Chadick and Francis I. Gowen to said Cooper & Son, in which they directed them to stop work, and asked them to make a bid in a gross sum for the completion of the work, and their answer thereto, both show that said bid was to be accepted and said work continued and completed only after an order from the court was obtained therefor.

"*Fourth.*—Said Special Master erred in holding that the vouchers attached of said Cooper & Son for work and material on said building filed in the Auditor's office became accounts stated; and erred in holding that said vouchers became

evidence of indebtedness against said Receivers that could not be questioned or disputed except for fraud or mistake, none of said vouchers having been approved by the Receivers or either of them; and erred in computing interest on said vouchers.

"*Fifth.*—Said Special Master erred in holding that said Cox had authority to bind the Receivers or charge the property in their hands by his approval of said vouchers.

"*Sixth.*—Said Special Master erred in finding that the Receivers had full knowledge of the fact that Cooper & Son were doing work and furnishing material on said building in reliance on said pretended contract of July 7th, 1891; and erred in finding that said Receivers encouraged and countenanced said work under said contract; and erred in finding that said Receivers furnished them with a supervising architect to superintend the same; and said Special Master erred in finding as a conclusion of law that for said reasons said Receivers are now estopped from denying their obligations to said Cooper & Son under said pretended contract.

"*Seventh.*—Said Special Master erred in holding as a conclusion of law that the only defense which said Receivers can have to the claim of said Cooper & Son is in showing that the work performed by said Cooper & Son and material furnished by them were not in accordance with the details, plans, and specifications attached to said contracts.

"*Eighth.*—Said Special Master erred in finding that there was due said Cooper & Son the sum of $14,919.37." (Record, 76, 77.)

Cooper & Son then filed the following motion to strike these exceptions from the files:—

"Come now W. H. Cooper & Son, by their attorneys, and move the court to strike out from the record and suppress the exceptions to the report of the Special Master filed by

the acting Receiver of the Choctaw Coal and Railway Company, and for such motion, and in support thereof, respectfully refer to the order of this Honorable Court, a copy of which is hereto attached and made a part hereof, whereby it doth appear that the report of the Special Master is conclusive upon the facts involved herein and binding upon said Receiver.

"Wherefore said Cooper & Son pray judgment, etc." (Record, bottom 31, top 32.)

Which motion was sustained by the court and judgment rendered against the Receiver for $14,749.45, and the exceptions to the Master's report were never heard by the lower court.

The United States Circuit Court of Appeals substantially sustained the report of the Master and the judgment of the lower court. (Record, 86 to 92 inclusive.)

ERRORS RELIED UPON.

The errors relied upon in this court are set out in full in appellants' assignment of errors (record, 95, 96, and 97), and are as follows:—

I.

That the said United States Circuit Court of Appeals erred in holding that there was a contract between the appellees, Cooper & Son, and the Receivers of the Choctaw Coal and Railway Company that was binding upon the Receivers for the work done by said Cooper & Son prior to June 3d, 1891, the receivership of said company having commenced December 19th, 1890, and no order of court ever having been made for said work.

II.

The said United States Circuit Court of Appeals erred in holding that there was a contract between the Receivers of said company and said Cooper & Son that was binding upon said Receivers for the work done after June 3d, 1891; and the court erred in holding that the pretended contract of July 7th,

1892, was valid and binding upon the Receivers, the same never having been signed by either party and no order of court ever having been made authorizing the same.

III.

The said United States Circuit Court of Appeals erred in holding that said Receivers were bound to pay the amount named in said pretended contract of July 7th, 1891, without regard to the value of the work done and materials furnished in said pretended contract.

IV.

The said United States Circuit Court of Appeals erred in affirming the decision of the United States Court in the Indian Territory, of January 19th, 1892, in said cause, for the following reasons:—

(*a.*) Because the Master refused to admit testimony as to the true value of the work done and material furnished by said Cooper & Son upon said Kali-Inla Hotel building, as he was directed to do by the order of said court of October 13th, 1891.

(*b.*) Because said Master erred in confining said investigation to the question as to whether there were contracts between the Receivers and said Cooper & Son for said work, and in finding that there were such contracts, and in holding that the Receivers were bound to pay the amounts named therein.

(*c.*) Because said Master erred in holding that certain vouchers made out for work done prior to June 3d, 1891, and not signed or approved by either Receiver were of the nature of accounts stated, and were binding upon the Receivers, and could not be impeached except for fraud or mistake.

(*d.*) Because said Master erred in holding that one H. W. Cox had authority to bind the Receivers by his approval of vouchers and estimates of work done.

(*e.*) Because said Master erred in finding that the Receivers had full knowledge that Cooper & Son were doing work and

furnishing material on said Kali-Inla Hotel building in reliance on said pretended contract of July 7th, 1891, and erred in finding that the Receivers encouraged and countenanced work under said contract.

(*f.*) Because said Master erred in failing to find and report the amount justly and equitably due the said Cooper & Son as the true value of the work done and materials furnished upon said building by said Cooper & Son, as he was directed to do by said order of court of October 13th, 1891.

V.

Said United States Circuit Court of Appeals erred in affirming the decision of the United States Court in the Indian Territory because said court refused to hear any exceptions to the report of the Special Master filed in said cause, and on the nineteenth day of January, 1892, sustained a motion striking said exceptions from the files and refusing to hear the same.

VI.

Said United States Court of Appeals erred in requiring appellants to pay the full amount named in said pretended contract of July 7th, 1891, and in paying the contract price for the work done prior to June 3d, 1891, under said pretended contract of May 23d, 1890, for the reason that the order of said court of October 13th, 1891, ordered the Master to take testimony to ascertain the amount justly and equitably due said Cooper & Son, based upon the true value of the work done and materials furnished by them, which order contemplated an investigation of the entire cost of said building, and intended that the Receivers should only pay the amount finally found to be due as the true value of the work done and materials furnished, without regard to any contract or to any contract prices.

VII.

Said United States Circuit Court of Appeals erred in finding that said contract of July 7th, 1891, or the plans and

specifications attached thereto, were ever in any way approved by the court, and in holding that said pretended contract was ever in any way authorized by the court.

VIII.

Said United States Circuit Court of Appeals erred in considering the question of contract between the Choctaw Coal and Railway Company and the United States in regard to the location of the United States Court at South McAlester, Indian Territory, for the reason that the same was immaterial and irrelevant to the question before the court, which question was not whether the Choctaw Coal and Railway Company was to establish court quarters at South McAlester, but the question before the court was whether the Receivers of said company should be required to pay more than the same were worth. If such a contract was made it might be binding upon the company, but could not be binding upon the Receivers.

IX.

The said United States Circuit Court of Appeals erred in affirming the opinion of the said United States Court in the Indian Territory, because said court erred in making said Cooper & Son preferred creditors and requiring them to be paid in advance of other creditors of the trust estate in the hands of the Receivers.

X.

The said United States Circuit Court of Appeals, in affirming the decision of the United States Court in the Indian Territory in said cause, disregarded the plain rules and principles of law governing Receivers and the administration of trust estates, and treated the pretended contracts of May 23d, 1890, and July 7th, 1891, as though they were contracts with the company, and hence binding on the Receivers.

XI.

The court erred in holding in effect that Receivers can make large, exorbitant contracts without authority of court before so doing.

ARGUMENT.

It is apparent upon the most perfunctory examination that the ruling of the Circuit Court of Appeals was only made after a careful review of the testimony. Freely conceding this, and recognizing the impropriety of asking this court, in ordinary cases, to review mere findings of fact, a sufficient reference to the testimony will be made to present clearly the grounds for reversal upon which reliance is placed.

It is necessary, therefore, to ask that the finding that "when the plans and specifications were furnished to Cooper & Son and the latter had stated the gross sum for which they would perform the work called for, the terms of the proposed contract were made plain, and when Cooper & Son were directed to proceed with the work called for by the plans, the contract between the parties was closed," be considered in the light of some of the testimony and of the decisions of this court.

Such a contract could not be "closed" so as to conclude and bind the estate without the deliberate and judicial action of the court. It was for a large expenditure upon property which did not belong to the railroad company, which was not covered by the lien of the mortgage, and which was not essential nor even useful to the operation of the railroad. The old management had entered into a contract for the erection of a hotel upon ground which belonged to strangers, upon plans so defective that when complete the structure was worthless. It ought to need no authority to prove that before Receivers could involve the trust estate in such a liability, full and deliberate approval by the court before action was indispensable—even if it were competent for the court, without the consent of every creditor, to give such authority. But it has been repeatedly decided that such precedent order is indispensable.

In Cowdrey *vs.* Railroad Company, 93 U. S., 352, Mr. Justice Field says: "A Receiver is not authorized, without the previous direction of the court, to incur *any* expenses on account of the property in his hands beyond what is absolutely essential to its preservation and use as contemplated by his appointment."

In the Union Trust Company *vs.* Railroad Company, 117 U. S., 434, money was borrowed by the Receiver to pay the expenses of the receivership, repairs, supplies, and pay rolls, all of which were entitled to a preference, and yet because no previous authority had been given it was held that the indebtedness so incurred was not entitled to priority.

These cases were well known to the profession, and Mr. Gowen, who is a lawyer of large experience, gave notice in his letter of June 3d, 1891, that he proposed to be governed by their authority. Read in the light of this warning, the testimony as to the acts and declarations of Mr. Gowen is consistent and intelligible. He never gave his assent, because no order of the court had been made, and it is needless to cite authority to show that both Receivers were required to unite in the exercise of discretionary powers in order to bind the trust. Conclusive evidence in reference to the action of the court is found in the report of the proceedings before the Master.

At the hearing appellees attempted to show that the work after June 3d, 1891, was done under an order of the court, but the only testimony to support it is the statement made by Major Nelson, Master, during the hearing, which is as follows:—

"THE MASTER:—I will state for information that I presented plans and specifications to the court myself. I presented it to the court and also to the United States marshal. The judge and myself looked the matter over—the arrangement of the rooms, &c. I was going to say it was submitted to the court and canvassed thoroughly, and the court ordered the work done. It was upon the authority of the court that I gave the order spoken of by Mr. Cooper. It was not upon my own authority, but upon the authority of the court.

MR. MCLOUD:—Was not that sent to you more for your folks to examine and see if the arrangement of the rooms and the facilities suited your wishes?

"THE MASTER:—That is what it was sent for, to see if we had any suggestions to make in regard to the arrangements of the rooms.

"MR. MCLOUD:—Was the question of the amount of money to be paid for the work considered by you or the court?

"THE MASTER:—No, sir; the court ordered the work done, leaving the matter of price entirely with the Receivers.

"MR. MCLOUD:—There was no order of court, then, ever made approving the contract to pay $10,250 for the work?

"THE MASTER:—The court ordered the work done in conformity with the specifications; the matter of price he left entirely with the Receivers.

"MR. MCLOUD:—The court made no order at all in regard to the price."

"THE MASTER:—None at all, certainly." (See record, 61.)

The contract had not yet been drawn up. (See testimony of H. W. Cox, who drew it up. Record, 66, 67.)

It clearly appears from these statements that there never was any order of court; that neither the court nor the Master ever saw the contract of July 7th, and did not know what amount it was proposed to pay for the work, and that neither the Master nor the court knew at the time that it was proposed to pay $10,250 for the fitting up of these rooms. All that was known to it was that when the plans and specifications were being prepared they were sent to Major Nelson, to see if the arrangement of the rooms for the court apartments suited him, the marshal, and Judge Shackelford.

The undisputed facts are entirely as one would expect to find them, in view of the failure of the court to act judicially upon the subject. The contract was drawn up but it was never signed by any one. The plans and specifications attached to the contract are only signed by W. H. Cooper & Son and H. W. Cox, "supervising architect." (See record, page 13.) This can mean nothing more than that the plans and specifications which were prepared by Cox were satisfactory to him and Cooper. It cannot be strained into an execution of the contract. It is very evident that Cooper did not regard it as an executed contract, and knew there was no order of court authorizing the work, and that he went ahead with the work because Mr. Chadick told him to. He acted upon the word of the Receiver at his peril. The letter of June

3d to Cooper & Son, signed by both Receivers, had given them notice that no more work would be done on the building until an order of court therefor was obtained. The fact, therefore, that Cooper on the 28th of August desired the contract to be signed by one of the Receivers, before giving the court officers possession of the court apartments, shows conclusively that they did not consider that they had a contract. It had been presented to Mr. Chadick several times; it had been on his desk some days before the 28th, but he did not sign it or approve it, but on the evening of August 27th, 1891, he turned it over to his attorney for examination and to see if it was all right as to form, and if it was, to turn it over to Mr. Cooper. (Record, 68.)

The first time Mr. Gowen saw the paper was August 29th, 1891, and he then refused to sign it because he did not think the work was worth the amount named in the contract, and would not sign a contract for that amount without being satisfied that it was for the interest of the trust estate for him to do so, and he never did sign it.

Finally, when the attorney for Cooper & Son introduced the contract of May, 1890, in evidence, he said, when its introduction was objected to, "If the court please, it is not for the purpose of binding the Receivers. The evidence all shows that all money due on that contract was paid at the time of the appointment of the Receivers, and I just want to introduce that contract *to show the identity of the parties* continuing the work afterwards." The Master, however, appeared to be more willing to favor Cooper & Son than their own counsel, and stated: "If you show that this work, after the appointment of the Receivers up to June 3d, was done under the contract of May, 1890, I will admit it." Then Mr. Cooper said: "I worked under the contract with the railroad from May, 1890, to June 3d, 1891."

THE MASTER:—"The contract of May, 1890, is admitted in evidence." (Record, 54.)

In view of the statement of the Master and of the acts of the parties, it is indisputable that the court never gave precedent authority to accept and execute the contract, and with all de-

ference to the Circuit Court of Appeals, it is submitted with great confidence that one of the Receivers, at least, never assented to the contract. Under these circumstances, the contention of the trustee and of Mr. Gowen was most reasonable. No attempt was made to throw out the claim altogether, and all that was asked was that only so much should be charged upon the trust estate as was justly and equitably due, or, in other words, that the recovery should be upon the basis of *quantum meruerunt.*

This was the basis adopted in the leading case of Vanderbilt *vs.* Little, 43 N. J. Eq., 669, where a most elaborate opinion was delivered by Mr. Justice Magie, and the contract reformed and compensation allowed upon an equitable basis. This case is cited with approval by Mr. Justice Jackson in Chicago Deposit Co. *vs.* McNulta, 153 U. S., 554, and with other State authorities, collected in 20 Am. and Eng. Ency., 366, *et seq.*, fully justifies the position taken by the appellants before the Master and in the courts below.

As the claimants have refused to accept compensation upon the basis of what their work was actually worth, it seems entirely proper and justifiable to point out that they are not legally entitled to anything. The ruling in Fosdick *vs.* Schall, 99 U. S., 235, which displaced liens of record in favor of certain equitable claimants, was avowedly made as an innovation, and was justified upon the score of necessity. Acting under its authority, courts having supervision of Receivers have felt warranted in sanctioning expenditures in the way of railroad extensions and betterments, which have resulted in sweeping away the entire *corpus* of the mortgaged property, which the courts had undertaken to conserve and protect.

It is not proposed to question the plenary power of the court where the addition or betterment is strictly appurtenant to the mortgaged property and the fruit of the expenditure becomes subject to the lien of the mortgage. In the land grant cases, of which the St. Paul and Pacific is a type, the precedent set by Judge Dillon may be technically justifiable, though in many cases the practical result has been most disastrous, as in the Miltenberger case, 106 U. S., 286; or in

Stanton *vs.* Railroad Co., 2 Woods, 506, where the Receivers certificates authorized to complete the road to Chattanooga exceeded the value of the entire road. But the captain cannot put a bottomry bond on the ship to carry out a contract having no relation to the vessel, and the court below had no power to spend the money of the mortgage creditors of a railroad to build an hotel or court house upon land belonging to others, and to which the railroad company and the Receivers had no title. If the judge had even proceeded judicially, and received testimony and called upon the Receivers to justify the proposed construction, he might, perhaps, have elicited and found facts to warrant his action, but it appears affirmatively, on the record, that the question of cost and the terms and conditions of the contract were never considered, and no action in court was ever taken. Something more than this is necessary to warrant the diversion of trust funds and the cancelation of liens of record.

The language of Mr. Justice Brewer in Kneeland *vs.* American Trust Co., 136 U. S., 89, 97; of Mr. Justice Blatchford in Union Trust Co., *vs.* Illinois Midland R. R. Co., 117 U. S., 434, 477; and of Mr. Justice Jackson in Chicago Deposit Vault Co., *vs.* McNulta, 153 U. S., 554, has been understood to mean that mortgage securities are not to be postponed or confiscated except in cases of overruling necessity, ascertained and adjudicated after careful examination and patient hearing. No such necessity did, in fact, exist in the present case; but if it did, it was never made to appear, and was never judicially adjudged and decreed.

J. W. McLEOD,
SAMUEL DICKSON,
For Appellants.

Office Supreme Court
FILED.
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JAMES H. McKENNEY,
Clerk.

15147.

SUPREME COURT OF THE UNITED STATES,

OCTOBER TERM, 1895.

No. 164.

THE GIRARD LIFE INSURANCE, ANNUITY AND TRUST COMPANY, TRUSTEE, AND FRANCIS I. GOWEN, ACTING RECEIVER OF THE CHOCTAW COAL & RAILWAY COMPANY, APPELLANTS,

vs.

W. H. COOPER AND JAMES COOPER, COMPOSING THE FIRM OF W. H. COOPER & SON, APPELLEES.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLEES.

ARTHUR G. MOSELEY,
Counsel for Appellees.

HERALD STEAM PRINT, DENISON

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BRIEF FOR APPELLEES.

STATEMENT.

The statement contained in appellant's brief is partial and argumentative to a degree that necessitates an additional statement on the part of appellees. This proceeding was iniatiated by the filing of a motion by a number of the creditors of the receivers of the Choctaw Coal & Railway Company on September 30th, 1891, among whom were the appellees. They alleged in substance that they were creditors of such receivers and the amount of

indebtedness due to each; that the receiver, Francis I. Gowen, was a resident of Philadelphia and was most of the time absent from the situs of the property under his charge; that the receiver, Edwin D. Chadick was about to depart beyond the jurisdiction of the court upon an indefinite leave of absence; that the indebtedness of the receivers was increasing and that the road and mines had not been operated to their capacity; that the receivers did not work harmoniously together; that the receiver, Francis I. Gowen, was so intimately connected with and under the influence of the holders of the bonds of said railway company as to place the road practically under their control instead of in the hands of the court; that the likelihood of their being able to collect their demands was daily decreasing; that they therefore prayed the appointment of a third person familiar with the operations of said railway who would be present at the head-quarters of said railway company and who would have such powers as might result in the proper management of the property, etc. (pp. 43 and 44.)

On October 7th, 1891, Francis I. Gowen, one of the receivers, filed his answer admitting the indebtedness to be due most of the parties who were complainants in the motion but as to the claim of appellees he said that he could not tell whether or not the amou t stated in the motion as due W. H. Cooper & Son was correct or not. Further, that there were certain set-offs to the demand. Further, that there was a question as to whether Cooper & Son had any valid claim against the receivers for that part of the work done on the hotel building outside of that required to fit up the court room and railway offices and enclose the building, as all work outside of that just named had been without any authority from the said Gowen and the question of the liability of the trust estate in the hands of the receivers for the value of this unauthorized work was one which at the proper time he deter-

mined to submit to the court for determination. (pp. 45 and 46.)

This matter came up before the Hon. Jas. M. Shackelford Judge of the United States Court in the Indian Territory, who was the same judge that had previously appointed the receivers in the case and also has made all the orders shown by the record to have been made in the trial court, and after a considerable hearing, begun October 7th, (p. 48) and terminated October 13th, (p. 49) resulted in an order directing relief in nearly each complaint made in the motion and upon appellees' claim the order recited, "And that the claim of W. H. Cooper & Son be referred to the Master to take testimony thereon and to ascertain the amount justly and equitably due as the true value of the work done and materials furnished by them upon and for the Kali-Inla hotel building at South McAlester and that receivers' certificates bearing seven per cent interest be issued and delivered to them for one-third of the amount so found to be due and to sell and deliver in settlement thereof lumber at the market price thereof for one-third of said amount and the balance in cash, to be borrowed on certificates as hereafter authorized." (p. 49.)

Pending this proceeding, on October 8th, 1891, appellees filed in the court at Ardmore before the Hon. Jas. M. Shackelford, judge, their separate complaint, setting out specifically appellees' claim against the receivers, (p. 2) which was the claim referred to in the above order, and at the time of said order it was agreed that said claim should be taken up before the Master at South McAlester on October 24th, 1891, at which time and place appellees appeared, as did also Receivers Gowen and Chadick, and The Girard Life Insurance, Annuity & Trust Company also appeared and filed answer (p. 50) and the evidence was then proceeded with before the Master.

After this general summary I will present counter proposi-

tions to appellants' assignments and present under each a statement of the evidence applicable thereto.

COUNTER PROPOSITION TO APPELLANTS' FIRST ASSIGNMENT.

The evidence conclusively shows that there was a contract between the appellees, Cooper & Son, and the receivers of the Choctaw Coal & Railway Company that was binding upon the receivers for the work done by appellees prior to June 3d, 1891, which was recognized by the receivers, their agents and employees, and the work was permitted to be done thereunder and the same was accepted by the receivers and the indebtedness threupon arising was recognized by the receivers by the issuance of vouchers therefor.

STATEMENT.

Mr. Edwin D. Chadick, one of the receivers, testified as follows: He was general manager of the Choctaw Coal & Railway Company from its inception to January 8th, 1891, when he was appointed receiver in conjunction with Mr. Francis I. Gowen. From January 8th, 1891, to August 28th, 1891, he was acting or managing receiver. Since that time Mr. Gowen has been acting or managing receiver. While general manager he represented to the board of directors that a necessity existed for a building which should combine an office building and hotel and also a temporary abode for the United States Court for the Indian Territory. At the instance of the board he had gone before the Judiciary Committee in Congress and stated that if Congress would locate a United States Court at South McAlester, the company would provide them free of all cost with suitable quarters. Upon consultation with Mr. Alderson, treasurer and executive officer, the Kali-Inla hotel building was determined upon. It was to be headquarters for the road, the United States Court and a hotel if needed. W. H. Cooper & Son were in the employ of

the road in constructing section houses, etc. He sent for them and made an agreement that they should complete the whole of the hotel. The hotel was already one story in height, that is the rock walls, and appellees took it from this point on. When the company went into the hands of receivers it owed Cooper & Son $16,000.00; about one-half of it due on the hotel. By an agreement entered into at Philadelphia about the 20th of December the bondholders agreed to allow $500,000.00 receivers' certificates to be issued to pay off floating indebtedness. This contained the vouchers of W. H. Cooper & Son and all the data. On the 8th day of January, 1891, after the appointment of the receivers, these accounts were turned over to Mr. Gowen and himself and they spent the next ten days in the investigation of these accounts and checking them over, and after this Mr. Cooper was paid all that was due him to this date, January 8th, 1891. The building was not roofed, nor glazed, nor weather-proof in any sense. He conceived the building was suffering and authorized Cooper to go ahead and make it weather tight. The offices occupied by the treasurer of the receivers was not sufficient and he authorized Mr. Cooper to finish the offices in the Kali-Inla Hotel for the use of the treasurer and auditor, and also to fit up the offices on the floor above. In the latter part of May Mr. Gowen and I had a consultation and concluded it was best to have Mr. Cooper stop work upon the hotel, make up his account to date and then make an estimate of the gross amount for which he was willing to finish a court room, the hotel building, and finish it up complete, and with that end in view wrote to Cooper the following letter:

"SOUTH MCALESTER, Ind. Ter., June 3d, 1891.

Messrs. W. H. Cooper & Son, South McAlester, I. T.:

Gentlemen—Under direction of the court we notify you to stop all work on the Kali-Inla Hotel from this date and make

out your bill for work done up to and including to-day. We will then furnish you with designs and directions of work to be done and you will name the gross sum for the performance of same, and we will submit same to the court for their approval or disapproval.

Yours truly,

EDWIN D. CHADICK,

FRANCIS I. GOWEN,

Receivers Choctaw Coal & Railway Company."

I wrote the following letter:

"SOUTH McALESTER, I. T., June 19, 1891.

Messrs. W. H. Cooper & Son, South McAlester, I. T.:

Gentlemen.—Replying to your favor of the 17th inst., I desire to say that owing to the payment of interest on receivers' certificates this month and other back payments we are unable to settle the amount due you on the two vouchers, amounting in the aggregate to $14,000. We expect, however, to be in shape early in July to pay all these matters and will certainly pay all if business continues at the present rate. There is no apprehension and no indication of its letting up, and we are therefore confident that within the month named we shall be able to settle with you either in full or for the greater portion of said vouchers. If you desire it, we will accept for fifty per cent of the same and will endeavor to do better than that if possible.

Very truly yours,

EDWIN D. CHADICK,

For Receivers."

Mr. Gowen knew of the building of the Kali-Inla hotel and approved the vouchers. He was present at the time of the

settlement with Cooper of the debt accrued prior to the receivership.

I have examined Mr. Cooper's claim against the receivers prior to June 3d, which has been vouchered and that since June 3d which has not been put in the form of a voucher. In my judgment it is just and correct so far as I am acquainted with the details. Maj. Shellenberger held the position of manager and chief engineer prior to the appointment of the receivers and up to and including June 3d, 1891, and as such it was a part of his duty to sign vouchers for work such as buildings in connection with the road. Mr. Cox was architect both before and after the appointment of the receivers and his duties were to draw plans and tracings for buildings, superintend their erection and see that contracts were drawn up for the building of the different structures we had. He drew up all plans and specifications for this building and superintended the erecting thereof. Most of the contracts for buildings had been practically executed by Mr. Cox, my approval in most cases being pro forma. I relied on Mr. Cox to tell me what was correct in these matters and whether they were in a businesslike shape so far as he could judge from an architectural or business standpoint. (R. pp. 56, 57, 58, 59, 60, 61, 62, 63, and 64.)

George A Rivere testified: I was auditor for the receivers of the Choctaw Coal & Railway Company from February 1st, 1891, up to and including October 15th, 1891. I have seen the original voucher which is attached to the complaint as Exbibit H and it has been paid. This voucher dated February, 1891, upon which a balance of $4886.62 was due by receivers to Mr. Cooper, was made out in duplicate and a copy sent to Mr. Gowen, who lost his duplicate and ordered another made out, and the last payment made on it was made by his order. (R. p. 65.)

Exhibit H is as follows:

EXHIBIT "H."

Form No. 11-5M-2-90.

TRIPLICATE.

The Choctaw Coal and Railway Company to W. H. Cooper & Son, South McAlester, I. T., Dr.

1891.

Feb'y. To labor performed in the construction of the hotel Kali-Inla to M'ch. 1, 1891, as per statement hereunto attached	$18576.55	
Less previous estimates	13617.93	
	$4958.62.	
Less 28 8-10 cord rock furnished	72.00	
Amount due	$ 4886.62	
Total		$4886.62

I hereby certify that the above is correct.

S. L. SHELLENBERGER,
Chief Engineer and A. M.

(R 21.)

(Testimony of Rivere resumed:) I have seen and audited all vouchers presented in evidence and attached to the petition. I knew very well in this case that Mr. Cooper was contractor for the receivers. I knew it from both receivers. I knew that Maj. Shellenberger, chief engineer, would not send me a voucher which the company did not owe and I knew from the fact that Maj. Shellenberger stated that the work had been done, it was correct. (R. pp. 65 and 66.)

The vouchers referred to, attached to the petition, are as follows:

EXHIBIT "B."

Form No. 11-5M-2-90.

DUPLICATE.

The Choctaw Coal & Railway Company to W. H. Cooper, South McAlester, I. T., Dr.

April, 1891.	To labor peformed in the construction of the following buildings, as per statement attached, as follows:	
	Mill-work	$487.66
	Engine house, South McAlester	1043.00
	Roadmaster's office	200.00
	15 Section houses complete	7648.85
	Loading and unloading 2 cars fence posts	16.50
	Labor on water-tanks	129.86
	Unloading material South McAlester yard	245.00
	4 depots complete	2222.02
	Grading siding to plaining mill	135.73
	Master mechanic's office	150.00
	Cattle-guards	145.00
		$12,423.62
	Less previous estimates	11,270.89
	Amount due	$1,152.73
	Final and conclusive for all work performed in the construction of the above buildings	$1152.73

I hereby certify that the above is correct.

S. L. SHELLENBERGER,
Chief Engineer and Ass't Mngr.

(R. 14)

EXHIBIT "C."

Form No. 11-6M-2-90.

DUPLICATE.

The Choctaw Coal and Railway Company to W. H. Cooper & Son, South McAlester, I. T., Dr.

1891.

May 9th. To labor performed in the construction of the hotel Kali-Inla to May 9th, 1891, as per statement hereunto attached.....$29,759.52

Less previous estimate..... 18,576.55

$11,182.97

Total..... $11,182.97

I hereby certify that the above is correct.

S. L. SHELLENBERGER,
Chief Engineer and Ass't Mngr.

(R p. 14.)

EXHIBIT "D."

Form No. 11-5M-2-90.

DUPLICATE.

The Choctaw Coal and Railway Company to W. H. Cooper & Son, South McAlester, I. T., Dr.

1891.

May and June. To labor performed in the construction of the hotel Kali-Inla to June 3rd, 1891, as per statement hereunto attached:

Total to June 3rd, 1891.....$33,047.21

Less previous estimates..... 29,759 52

Balance.....$ 3,287 69

The above is final and conclusive as to all labor performed in the construction of the above building up to and including June 3rd, 1891.

Total..... $3,287.69

I hereby certify that the above is correct.

S. L. SHELLENBERGER,
Chief Engineer and Ass't Mngr.

(R p. 14.)

Testimony of H. W. Cox: I was assistant engineer and supervising architect for the Choctaw Coal & Railway Company during the year 1890. I held the same position under the receivers in the year 1891. The signature to the contract marked Exhibit G is my signature. I signed it by virtue of my authority as supervising architect. I was specially authorized to write and execute that contract by Mr. Chadick. The work done by Mr. Cooper on the Kali-Inla Hotel was done in compliance with the terms and specifications of the contract. Mr. Cooper performed the work under that contract and specifications in the year of 1891. All the work done by Mr. Cooper in the year 1891 prior to June 3d, was done by him under the same contract and specifications. (R. p. 66.)

(Exhibit G is substantially as follows: A contract entered into on the 23d day of May, 1890, for the construction of the Kali-Inla Hotel, R. pp. 16, 17, 18, 19, 20 and 21.)

I have examined some of the vouchers attached to the complaint. The vouchers of April, 1891, May 9th, 1891, May and June, 1891, I made myself. They show all the work done on the hotel. The statement in these vouchers is true and the charge is reasonable and made in accordance with the contract and specifications attached as Exhibit G to the complaint. I made the statement as agent for the receivers as supervising architect and certified there that the work was done by Mr. Cooper and the material was furnished by him in the construction of this hotel.

Testimony of W. H. Cooper one of the appellees: The signature to the vouchers marked Exhibits B, C, and D (R. p. 14) is that of S. L. Shellenberger, chief engineer. At the time the receivers were appointed, the railway company owed me money on the Kali-Inla Hotel earned under the contract of May, 1890. A complete settlement of this amount was made with me by the receivers and one-half paid in cash and one-

half in receivers' certificates. All the work done by me, as evidenced by these vouchers, has been done since the appointment of the receivers. Except the credits set forth in my account attached to this motion the receivers have paid me nothing on these several vouchers. I commenced work on the Kala-Inla Hotel in May, 1890, and at the time the receivers were appointed the stone work was completed and we had the mansard stories up and lined on the inside and sheeted on the outside. It was not enclosed or the windows in, merely a frame enclosed in sheeting. I did that work under the contract with the railway which is attached to the complaint marked Exhibit G. My work under the contract in May, 1890, was inspected by both of the receivers. Mr. Chadick was frequently here, through the building and over it. Mr. Gowen was here one time with Mr. Ashbridge, treasurer, to make some changes. He looked over the work and complimented me on the building and the work generally and asked me how long I thought it would take to get the building completed so the offices could be moved, and went on to say it was a horrible place at the depot, all cramped up, and he wished I would push the work as fast as possible. I think this was prior to June 3d. After the appointment of the receivers I continued work upon the hotel under the same contract, that of May, 1890. The voucher attached to the complaint, dated February, 1890, for $4886.62, (Exhibit H, R. p. 21) was for work done by me on the Kali-Inla Hotel, under the contract of May, 1890, after the appointment of the receivers, and was paid to me by the receivers, by Mr. Gowen I think. I continued work upon the hotel after the appointment of the receivers until June 3d, 1891, when I received a letter of that date signed by the receivers, notifying me to make out my bill for the work done and that designs would be furnished me. (R. pp. 51, 52, 53, 54 and 55.)

* * * * * * * * * *

On Feb. 18, 1888, Congress granted to The Choctaw Coal & Railway Co., a corporation organized under the laws of Minnesota, a right-of-way across the Indian Territory. This railroad company began construction through a country that had no towns. It had not only a franchise to build a railroad, but also to develop and operate coal mines. It became necessary to build not only depots and section houses, but also houses for miners and employes.

On May 2, 1890, Congress divided the Indian Trrritory into three judicial divisions. The court for the Second Judicial Division was located at South McAlester, which is the intersection of the C C. & R'y Co. and M., K. & T. R'y. To secure the court at this place the C. C. & R'y Co., through its general manager, E. D. Chadick, pledged itself to erect and maintain a house suitable for the United States Court and offices. (R. p. 56.)

Mr. Chaddick, with the full knowledge and consent of the Board of Directors, employed H. W. Cox, a competent and skilled architect, as supervisor. Mr. Cox designed all buildings erected by the railway company, whether depots, section houses or necessary residences. He drew the plans and specifications and superintended the work. (R. p. 56 and 64.)

To provide suitable quarters for the court and its officers and also quarters for the general officers of the railway company and also a hotel for persons who would be required to attend court, Mr. Chadick decided to erect a building hereafter referred to as the Kali-Inla Hotel. (R. p. 56.)

On May 23, 1890, a contract was made between E. D. Chadick, for the railway company, and W. H. Cooper & Sons, for the erection of the hotel. (R. p. 18 and 19.) Under this contract the work began and was in progress when the railway company passed into the hands of receivers.

On Dec. 18, 1890, Langhorne Wister filed his complaint in equity against the Choctaw Coal & Railway Co., and prayed a

receiver. On the same day (R. p. 39) the Court "ordered and decreed that E. D. Chadick, Allan H Reed and S. L. Shellenberger be and they are hereby appointed receivers of all the property, estate and franchises of the said Choctaw Coal & Railway Co. of whatsoever kind and description and wheresoever situated, including the coal leases, mines, mining machinery, railway track, roadbed, depots, rolling stock, telegraph line, franchises, rights and privileges of the corporation defendant, and all assets and property, real, personal and mixed of every kind and description, and the lands, tenements, goods, chattels, funds, assets, monies, credits, choses in action, rights and interests of every kind, name and nature, either in law or equity, or any part thereof belonging to the same, shall be placed in the hands of said receivers, to hold the same subject to the orders of the Court made herein, and it is further ordered that the said receivers be, and they are hereby authorized and instructed to carry on the business of a common carrier throughout the whole extent of the Choctaw Coal & Railway Co.'s line of railway, and for these purposes they are hereby authorized and empowered to manage, control and exercise all the franchises of the company, and they are hereby vested with the powers, duties and obligations of receivers of the Court, and the said receivers are hereby further authorized and directed to keep the mines and other property employed and used in the manner they have heretofore been used and employed so far as they shall deem it to the advantage of all parties interested. * * * And they are hereby empowered and directed to employ such agents and attorneys as the corporation itself has hitherto done and they may find necessary in the proper conduct of the business."

Afterwards, on the 8th of Jan., 1881, The Girard L. I., A. & T. Co. filed its intervening petition asking for a receiver. The action of Langhorne Wister and this last were consolidated.

Allan H. Reed and S. L. Shellenberger having declined to qualify, Francis I. Gowen was appointed co-receiver. (R. p 40.) "And Edwin D. Chadick, named in said order of Dec. 19, 1890, and Francis I. Gowen, now appointed, be and they are hereby declared and constituted receivers of the property, estate and franchises of the said C. C. & Ry. Co. of whatsoever kind and description and wheresoever situated, including the entire railroad, the coal leases, mines, mining machinery, railway track, roadbed, depots, rolling stock, franchises, rights and privileges of the corporation, and all assets and property, real, personal and mixed of every kind and description, with all the power and authority conferred in and by the said original order of Dec. 19, 1890."

COUNTER PROPOSITION TO APPELLANTS' SECOND ASSIGNMENT.

The evidence conclusively shows that there was a binding contract between the receivers and appellees for the work done after June 3d, 1891, the same having been ordered by the court to be done and subsequently ratified by it.

STATEMENT.

From testimony of Edwin D. Chadick, one of the receivers:

SOUTH MCALESTER, I. T., June 3d, 1891.

Messrs. W. H. Cooper & Son, South McAlester, I. T.

Gentlemen—Under direction of the court we notify you to stop all work done up to and including this date. We will then furnish you designs and directions as to the work to be done and you will name the gross sum for the performance of same, which we will submit to the court for their approval or disapproval.

EDWIN D. CHADICK,
FRANCIS I. GOWEN,
(R. p 59.) Receivers Choctaw Coal & Railway Company.

SOUTH MCALESTER, I. T., June 23, 1891.

Messrs. W. H. Cooper & Son, South McAlester, I. T.:

Gentlemen—We have been advised by Maj. Wm. Nelson, Master, of the following order of the United States Court: "You are hereby directed to finish up the court room and all offices on the lower floor of the hotel building and also such rooms on the second floor as may be necessary" in accordance with estimates hereinafter furnished.

Yours truly,

EDWIN D. CHADICK,

For Receivers.

A. B. BOYD.

SOUTH MCALESTER, June 24th, 1891.

E. D. Chadick, Esq., Receiver Choctaw Coal and Railway Company:

Dear Sir—We will furnish all material and complete according to plans and specifications that part of the west half of the hotel building to be used as United States Court apartments for the sum of $7978; also the east part of said building to be used as railway offices and auditor's and bank departments, as per plans and specifications, for the sum of $2272.00, or both for $10,250.00.

The company has on hand material to the value of $2500.00, which it can furnish and deduct same from above amount.

(R. p. 60.) ——————————.

Mr. Chadick: My recollection is we did accept this proposion. I cannot say I ever formally answered that letter. My memory does not serve me to that extent and yet I have an impression I did write a letter in reference to it. The figures set forth in Cooper's letter were embraced in the contracts drawn up. The plans and specifications under which this building was completed after June 3d, were sent by me to Muskogee, or sent by Mr. Cox under my direction, and as I understood, were approved by the court.

The Master: I will state for information I presented it to the court myself. I presented it to the court and also to the United States Marshal. The judge and myself looked the matter over. I was going to say it was submitted to the court and adopted and the court ordered the work done. It was upon authority of the court that I gave the order spoken of by Mr. Cooper. It was not upon my own authority but upon authority of the court. The question of the amount of money was not considered by the court. The work was ordered done, leaving the matter of price entirely with the receivers. The court ordered the work done in accordance with the specifications, the matter of price to be left entirely with the receivers. (R. p. 61.)

Mr. Chadick: The contract of July 3, 1891, was drawn up by Mr. Cox and submitted to me. I approved it, not formally, because Mr. Gowen was not here. I looked it over and thought it was just and right. Mr. Cox was supervising architect, appointed first by the manager and continued by the receivers, and all contracts for buildings and specifications before this had been drawn by him. This was in the ordinary line of his business and duty. I knew that Mr. Cooper was working on this building in reliance upon this contract and in accordance with its terms. I supposed these specifications would govern the settlement of it. Mr. Gowen knew of this contract at the time. He was present when it was given to me in the early part of July. (R. p. 62.) I retired from the active receivership August 29th, 1891. On the evening of th 28th, I received a telegram at Muskogee stating that Mr. Cooper declined to allow the court officials to take possession of these rooms. I don't remember whether I received it or whether Mr. Gowen received it and handed it to me. I think I received it personally. I asked Mr. Gowan what was going to be done about this; we must have the room next week when the court meets and Cooper is holding it for the payment of

his debt. Gowen said, I will see Cooper the first thing in the morning and arrange about this. I said you will be sure to do this, for we will have trouble about this if you do not. He replied that he would see Cooper the first thing in the morning and arrange it. (The contract referred to, attached to the complaint as Exhibit E, is between appellees and Receivers Chadick and Gowen, and of date July 7th, signed by W. H. Cooper & Son and H. W. Cox, supervising architect.) (R. pp 6, 7, 8, 9, 10, 11, 12 and 13)

From the testimony of H. W. Cox, supervising architect: The contract of July 7th was executed by me. The specifications are attached and made a part of the contract. I signed the original contract of which Exhibit E is a copy. Right after the work was stopped about the 3rd of June, Mr. Chadick came in and then Maj. Nelson was down here and he asked me to go down to the hotel building with the Major and see what was wanted done here for fixing the building up for court purposes. They came down; Maj. Nelson offered suggestions and Mr. Chadick instructed me to make plans and specifications and submit them to the court and told me when I had finished them to send them to Muskogee to Maj. Nelson. I sent them there on the 6th day of June and judged they were correct as they were returned and the work was ordered to be done. Then I went to work and drew up a contract in compliance with the specifications and the plans and I sent one copy of the contract to Mr. Cooper with the specifications annexed and sent another copy to Mr. Chadick's office I also sent a copy of the tracing and gave Mr. Cooper a copy to work by. Mr. Cooper's bid was sent to Mr. Chadick and not to me. When I drew up the contract I understood from Mr. Chadick what the contract bid was and inserted the amount in the contract. Mr. Chadick ordered the work to go ahead and knowing the amount I inserted it in the contract. Mr. Chadick came to the building after this and

told me what the court wanted and approved of and for me to go ahead with it. Mr. Cooper was present at the time. The itemized statement marked Exhibit F shows the extra work done. It shows the contract price and includes the whole thing. The contract price was $10,250.00, and the extra work amounted to a little over $840, aggregating $11,092.74. I certified to it. It is a correct statement. The prices charged for the extra work are reasonable and proper. The work is worth what is charged. The contract work for which $10,250.00 was charged was done in compliance with the specifications and plans by order of Mr. Chadick. I made tracings and plans and sent them to Maj. Nelson to be submitted to the court. They were approved and returned with some modifications which I made. The specifications furnished Mr. Cooper were in accordance with the plans submitted to the court. R pp 66, 67

Exhibit F referred to is found on pages 15 and 16 of the record and is a complete statement showing the amount due under the statement of July 7th, 1891, and the particulars of extra work done thereunder.

From the testimony of W. H. Cooper, Appellee:

I completed the portion of the building specified in the specifications according to the plans and for the amount charged therefor in the contract. Exhibit F is a statement showing the material furnished and labor performed in building the Kali-Inla hotel building and United States court as per contract with the receivers dated July 7th, 1891. It includes the contract price of $10,250.00 and the charge for extra work and material changes. This account covers my whole claim for work done upon the building after June 3rd. On Saturday, August 28th, before court commenced here on the first Tuesday in September, Mr. Gowen and I had a conversation with reference to the delivery of the possession of the hotel I had this court room and court offices completed.

I had been told that there was going to be a change in the administration and that Mr. Gowen was going to take charge as managing receiver and I didn't know just how the thing would result and didn't feel like turning the building over until I had some assurance of my money. I locked the doors and telegraphed up to Muskogee where the receivers were, that I was holding the building. Mr. Chadick wired back that Mr. Gowen would be down in the morning. He came down Saturday morning, I was at work on the building with the men. He walked in where I was and said he would like to see me in his office in about a half an hour. He told me there that he hadn't time to look the matter up then, but on Monday following he would shape me up alright. I hesitated and Mr. Gowen said: Here is Mr. McLoud, I will just make a statement in his presence that your interest in this thing shall be guarded and I shall take your matter up on Monday and fix you, and Mr. McLoud said I could rely upon Mr. Gowen's word and Mr. Gowen then said: I don't talk personally or individually, I talk as receiver. I am managing affairs now and am talking officially; that it would only be a matter of a few days when I would have my money, and that was all he said at the time.

From the testimony of J. W. McLoud, attorney for Gowen: Mr. Cooper refused to turn over the building until his contract was signed. This was the contract of July 7th. Cooper told me he didn't expect to get any money at the time, all he wanted was to have his contract signed by the receivers. Next morning Mr. Gowen came down from Muskogee and took up the matter with Cooper. Cooper said he wanted us to have the contract signed. Mr. Gowen told him that the plans, etc., were voluminous and that he would take the matter up on the following Monday. He told Cooper he would lose nothing by letting the officers have possession of the building and whatever was owing him for his work and mate-

rial would be paid, but that he didn't want to sign the contract that morning for the amount mentioned in the contract, without knowing that it was right and proper. I told Mr. Cooper that he would lose no right to whatever lien he might have by giving possession of the building and advised him to do so. The result of the conference was that Mr. Cooper gave up possession of the building to the Marshal and Clerk. Mr. Gowen made no promise in that conversation as to what amount he would pay Mr. Cooper or when he would pay it. (R. pp. 69 and 70.)

From the affidavit of Francis I. Gowen, acting receiver: (filed in the case after hearing before the Master.) I agreed to the fitting up of quarters for the treasurer's and auditor's departments in the hotel building and Mr. Chadick, after a consultation as to the amount of room required, agreed that the eastern part of the ground floor should be fitted up for this purpose as that would give ample room for both departments. (R. p. 71.)

It is true that I knew and saw that work upon the court room and offices was going on, but I was informed by Mr. Chadick that this was being done by direction of the court and I assumed and believed that Mr. Cooper was going on with the work with Mr. Chadick's concurrence without regard to directions contained in letter of date June 3d, 1891. I made no protest against this at the time because I understood that the work had to be done and I felt confident that when it came to paying for it the court would take care that in justice to the other creditors Mr. Cooper would not be allowed any excessive sum. (R. pp. 71 and 72.) When Mr. Cooper came to me I didn't agree to pay the amount named in the contract. On the contrary, I declined to sign the contract and so stated to Mr. Cooper.

* * * * * * * * * * *

Upon this evidence the Master made a report as follows:

"Comes now William Nelson, hitherto appointed Master in the case of Langhorne Wister vs. Choctaw Coal & Railway Company and respectfully submits his report in this cause except as to the claim of W. H. Cooper & Son against said Receivers for erecting a certain building in South McAlester known as the drug store, a report of which claim will hereafter be made separately and distinct from the matters embraced in this report, and which has been continued at the special request of the attorneys of the Receivers until the twenty-fifth day of November, 1891.

"Edwin D. Chadick and Francis I. Gowen, Receivers, to
W. H. Cooper & Son,
"Dr.

To voucher, April, 1891	$ 1,152.73
To interest on same at six per cent. from April 1st to October 13th	37.655
To voucher, May 9th	11,182.97
To interest on same at six per cent. from May 9th to October 13th	292.621
To voucher, June 3d	3,287.69
To interest on same at six per cent. from June 3d to October 13th	72.329
To voucher No. 442, May 26th	92.25
To interest on same at six per cent. from May 26th to October 13th	2.152
To voucher No. 487, June 3d, (corrected)	789.12
To interest on same at six per cent. from June 3d to October 13th	17.36
To voucher No. 610, June 3rd	612.00
To interest on same at six per cent from June 3d to October 13th	13.464
To voucher No. 773, July 1st	74.95
To interest on same at six per cent. from July 1st to October 13th	1.311
To voucher No. 1020, August 1st	29.15
To interest on same at six per cent. from August 1st to October 13th	.359
To voucher No. 940, August 25th	3.45
To interest on same at six per cent. from August 25th to October 13th	.028

August 10th, lumber transportation department (not vouchered)	3.00
August 1st, three book cases	48.00
August 1st, removing safe	51.00
September 2d, lumber, motive power department	26.16
September 2d, to platforms, &c.	262.80
To contract on Kali-Inla hotel, dated July 7th, 1891	10,250.00
To extra work and material furnished on Kali-Inla hotel in addition to contract of above date	842.74
Total	$29,145.28

"CR.

The above amount is entitled to a credit agreed upon before me by the respective parties in this suit of	$14,225.91
Balance due W. H. Cooper & Son, October 13th, 1891,	$14,919.37

"FINDINGS OF FACT.

"1. I find that the vouchers above mentioned are valid, and were issued in good faith by agents of the Receivers, having authority so to do; and that W. H. Cooper & Son were given credit upon the books of said company for the amounts so vouchered, and were charged with such vouchers; and that said amounts constituted and became a debt from the Receivers to W. H. Cooper & Son, due and payable upon date of issuance.

"2. I find that the contract under and by virtue of which all work was done and materials furnished upon Kali-Inla Hotel from and after June 3d, 1891, and the specifications, plans, and drawings furnished therewith, were executed, furnished, and delivered by agents of the Receivers having authority so to do, and under the special direction and approval of the Receivers themselves and of this Honorable Court.

"3. That the work performed and materials furnished were so furnished and performed by W. H. Cooper & Son under and by virtue of and in relience upon the contract aforesaid, and that the Receivers knew that said W. H. Cooper & Son were so performing work and furnishing materials under and

by virtue of said contract, and in full reliance thereon; and with such knowledge approved of the work of said Cooper & Son, and managed and directed said Cooper & Son in the progress of said work, and have now received the benefit of said work and are in the possession of said hotel.

"4. I find that said W. H. Cooper & Son did all of the work done under the contract of July 7th, 1891, in strict accordance with the details, plans, and specifications furnished them with said contract by said Receivers, and are entitled to the contract price.

"5. Further, that the extra work charged for was done under and by virtue of a provision in said contract, and at the suggestion of the supervising architect, furnished by the Receivers, and with his approval; and that the prices charged for such extra work and materials furnished are reasonable and true."

"FINDINGS OF LAW.

"1. I find, as a matter of law, that the vouchers hereinbefore mentioned are in the nature of accounts stated and having been acquiesced in by both parties cannot now be impeached by either party except through allegation and proof of fraud or mistake.

"2. I find, as a matter of law, that the Receivers having had full knowledge of the fact that W. H. Cooper & Son were doing work and furnishing materials on Kali-Inla Hotel, in reliance upon contract of July 7th, 1891, and that the Receivers having encouraged and countenanced their work thereunder and furnished them with a supervising architect to superintend the same, and that the Receivers having received and gone into possession thereof, are now estopped from denying their obligations to said Cooper & Son under said contract, and that their only defense to that part of the claim of said Cooper & Son is in showing that the work performed by said

Cooper & Son and materials furnished by them were not in accordance with the details, plans, and specifications attached to said contract.

"WILLIAM NELSON,
"Special Master."

(Record, 73 to 76 inclusive.)

The exceptions to the report of the Master were filed by appellants. (R. p. 83.)

Appellees filed motion to strike exceptions from the record (R. p. 35) and the court upon a hearing of the matter on January 19th, 1892, made the following decree:

"On this day in open court, comes on to be heard the motion heretofore filed in this cause to strike from the files the exceptions to report of special master in matter of claim of W. H. Cooper & Son against Edwin D. Chadick and Francis I. Gowen, receivers, and also the motion for judgment upon report of special master.

"And it appearing to the court that heretofore, in chambers at Ardmore, I. T., the petition of Paul Waples and others was heard and determined, and that in the order there made October 13th, 1891, the court upon the evidence then adduced recognized and declared the validity of the claim of the said W. H. Cooper & Son; and that it being stated by receivers that they were entitled to certain credits upon said account, the court referred the said claim to the special master, with instructions to ascertain the amount due upon said claim, the validity of which had been adjudged by the court, and further ordered that the receivers, when the master should determine the amount, should pay to said W. H. Cooper & Son in cash, one-third of the amount so found by the master to be due, one-third in receiver's certificates and one-third in lumber at market value; it is, therefore, ordered that the motion to strike from the files the exceptions heretofore filed on behalf of Francis I. Gowen, acting receiver, the Girard Life Insurance,

Annuity & Trust Company of Philadelphia, trustee, be sustained, and the motion for judgment upon the master's report be granted.

"And it appearing from the report of the master made November 16th, 1891, that there was due by said receivers to W. H. Cooper & Son for work done and materials furnished in construction of Kali-Inla Hotel the sum of $14,749 45 on October 13th, 1891.

"It is therefore ordered, adjudged and decreed that W. H. Cooper & Son do have and recover of and from Edwin D. Chadick and Francis I. Gowen, receivers of the Choctaw Coal & Railway Company, the sum of $14,749.45, together with all costs herein expended, and the said judgment bear interest from November 16th, 1891, at the rate of 6 per cent per annum until paid.

"And it is further ordered, that said judgment be satisfied in obedience to the order of the court heretofore made at Ardmore, on October 13th, 1891, on or before February 15th, 1892, to which judgment, order and decree the Girard Life Insurance, Annuity and Trust Company of Philadelphia, trustee, of the bondholders of the Choctaw Coal and Railway Company, and Francis I. Gowen, acting receiver of the Choctaw Coal & Railway Company, do hereby [*ac*]cept." (R. pp. 32 and 33.)

Thereafter appellants filed motion for rehearing upon the coming in of which the court made the following decree:

"This cause of W. H. Cooper & Son coming on to be heard in open court, on this 29th day of January, 1892, upon the motions of Francis I. Gowen, acting receiver, and the Girard Life Insurance, Annuity & Trust Company of Philadelphia, trustee, of the bondholders of the Choctaw Coal and Railway Company, for a new trial in said cause of W. H. Cooper & Son, and the court being fully advised in the premises, doth overrule said motions and the judgment rendered in this

cause on the 19th day of January, 1892, is hereby confirmed and made the final judgment of this court in said cause, to which the said Gowen and the said trust company duly excepted." (R. p. 35.)

ARGUMENT.

It may be well in the beginning to observe closely the relation of the trial court to the questions submitted for determination. Judge Jas. M. Shackelford, judge of the United States Court for the Indian Territory, was the chancellor who placed the property in the hands of the receivers and made the initial order, in which occurred the following:

"And the said receivers are hereby further authorized and directed to keep the mines and other property employed and used in the manner they have heretofore been used and employed, so far as they should deem it to the advantage of all parties interested, and they are hereby empowered and directed to employ such agents and attorneys as the corporation itself has hitherto done and they may find necessary in the proper conduct of the business."

It was he who made the order for roofing the building—a character of work not contemplated in the Cooper contract. It was he who heard the evidence at Ardmore respecting the validity of the claim and determined its validity; referred it to the master to ascertain the amount and directed the manner of its payment.

It was he who confirmed the master's report and directed the decree in which he also construed the Ardmore order—or order of reference—in these words: "And it appearing to the court that heretofore in chambers at Ardmore, I. T., the petition of Paul Waples and others was heard and determined and that in the order there made on October 13th, 1891, the court

upon evidence then adduced, recognized and declared the validity of the claim of W. H. Cooper & Son; and that it being stated by receivers that they were entitled to certain credits upon said account, the court referred the said claim to the special master, with instructions to ascertain the AMOUNT DUE upon said claim, the validity of which had been adjudged by the court;" and proceeds to confirm report of master and enter judgment. (R. p. 33.)

It was he, who upon a motion for a rehearing—upon a full argument and assertion by appellants that the court had never given its consent to the completion of the building—entered the final order in the case (R. p. 35) confirming the former order made at South McAlester on January 9th, 1892, in the very building in which the contention had arisen.

While it may be said that the prior consent of the court to the completion of the building was not formally obtained and that the receivers acted upon their own responsibility in proceeding with the work, yet when the matter was brought to the attention of the chancellor he approves their contracts and concludes that the estate is properly bound thereby.

II.

The contention seriously urged by appellants over the construction of the Ardmore order—order of reference—that "the master should determine the amount justly and equitably due for the performance of the work," is untenable. That was a CHAMBERS order; it was not appealable; it did not require the consent of appellants to insure its validity; it possessed no function of control over the subsequent orders yet to be made in the case, but was subject to be modified by them. The judge that made it said, in the decree subsequently entered, (R. p. 33,) what was meant by that order. Who was best fitted to construe its meaning? Besides, if the master had wilfully failed to follow directions with reference to proceed-

ure contained in an order of reference and upon the coming in of the report, the court had said in the decree that the master's plan was better than his—was right—I take it the case would depend, not on whether the master's proceedings departed from the directions in the order of reference, but upon whether they departed from the law.

That question confronts us here. Did or not the Master err in refusing to admit testimony of the reasonable value of the work done by appellees prior to June 3d, 1891? It is believed that appellants' exception on this point (R. p. 76) does not comply with Rule 21 of this court, and should not be considered, and that their assignment of errors No. 4 (R. p. 95) presenting the same point does not comply with said rule and should not be considered by the court.

Apart from this, appellants did not raise the issue in their pleading. (R. pp. 22, 23, 24.)

Appellees' pleading was filed October 8th, 1891, and contained as exhibits vouchers signed by the chief engineer and assistant manager of the receivers, Exhibit B, C and D, (R. p. 14) which evidence all existing indebtedness claimed to have accrued prior to June 3d, 1891. On the 13th of October appellants took ten days in which to prepare and file their answers. (R. p. 50.) Now, they were notified by the pleading that appellees, as to the amount due prior to June 3d, 1891, were relying upon an admitted indebtedness, evidenced by accounts stated, settled and signed, yet they alleged no fraud or mistake on the part of their chief engineer and assistant manager. They knew that on their own books, as kept by their own auditor, these vouchers had been entered and stood as their indebtedness. Says Auditor Reviere: (R. p. 65). "When the chief engineer signs a voucher or certifies that the work has been performed, that prices agreed upon were approved and work done for which payment is to made, he sends it to the receiver. The receiver examines it

and returns it to the auditor to be audited and extensions and additions are seen to be correct; it is numbered and recorded and handed over to the receiver again; he signs it and by the auditor transmits it to the treasurer for payment, if the treasurer has any money; the signature of the chief engineer as to the correctness of an account coming from the engineering department is sufficient, and you will find vouchers which have been paid with the signature of the chief engineer only, audited by me without the signature of the receiver. I have seen and audited all the vouchers presented in evinence and attached to the petition." "When the engineer sends a voucher signed by him to the auditor, and it is recorded in the books of the company, it becomes a debt of the company, etc." (R. p. 65.)

Yet nowhere in the pleading do they impeach these vouchers for fraud or mistake or seek to open up the account; nor do they offer any better upon the introduction of evidence. They merely say that they have procured the services of two architects, one from Denison and one from Kansas City, who will testify what in their judgment the building could have been erected for and upon this flimsy pretext ask the court to set aside the acts of their own chief engineer done within the scope of his employment and while the work was progressing. The statements rendered and certified became accounts stated and could only be impeached for fraud or mistake.

Standard Oil Co. vs. Van Etten, 107 U. S. p. 325.

Lawrence vs. Elsworth, 41 Ark. 502.

Weed vs. Dyer, 53 Ark., 160.

Nor were appellants any more entitled to this evidence as affecting their liability for the work done after June 3d, 1891. Their pleading on this point is contained in paragraph 3 of their answer (R. p. 23) in which they admit: "But the respondent says that about the 3rd day of June, 1891, as he is informed and believes, an arrangement was made with the peti-

tioners by his co-receiver Chadick, with the approval of W. Nelson, Esq., special master in this cause and the Hon. J. M. Shackelford, judge of the court, to make certain alterations and additions to said hotel building to fit it up for a United States court room and rooms necessary for the officers of court, which work was done and the materials furnished by petitioners before any contract was ever signed by the receivers or either of them. That as to whether said work was done and materials furnished according to the arrangement made or whether it was worth the several sums charged therefor in petitioners' account, or whether the charges were made as stated in said account and as to the value of said work done and meterials furnished in making said changes this respondent has no knowledge or information sufficient to form a belief and therefore insists upon strict proof of each and every item of the same."

It will be observed that there was attached to the complaint an itemized account marked Exhibit F certified to as correct by H. W. Cox, supervising architect for the receivers, which covered the whole claim made by appellees for work done after June 3rd, 1891. (R. pp. 15 and 16.) There was no pleading upon which to open this account or attack its conclusiveness or correctness except as to the execution of the contract under which the work specified was performed and the whole question properly turned as was ruled by the master upon whether or not the contract of July 7th, 1891, was to be considered as the act of the receivers and they were bound thereby.

It is submitted that the master did not err in rejecting the testimony upon either phase of the case.

III.

Upon the other minor question that the trial court erred in striking out complainant's exceptions, we suggest that the re-

sult would have been the same had the court considered and overruled them, so that now the question turns not upon whether the court proceeded regularly in striking them out, but upon whether or not they presented anything of merit for the court to consider and with this end in view I pass to the discussion of appellant's first and second assignment of errors.

IV.

In considering their first assignment I submit that the evidence is conclusively binding upon the receivers for work done prior to June 3d, 1891. The work upon this building was begun in May, 1890, by appellees and continued until the appointment of the receivers in December 1890, at which time a large amount of the money of the railway company had been invested in the partial structure of a building, and there was then due and owing to appellees about $16,000.00, which was recognized as just and correct by not only the company, but the bondholders and the receivers as well, and the matter was paid off January 8th, 1891, by these very receivers; one-half in receivers' certificates and one-half in cash. The building was not then weather tight but in a condition in which it would be quickly destroyed by rain and storms and one of the receivers directed appellees to proceed with the work under the contract and get the building in condition. In pursuance of this direction appellees proceeded with the work under the old contract of May, 1890, and by March 1st, 1891, had done a considerable amount of labor thereon, which was checked up and certified to by the chief engineer and vouchered by the auditor. (See Exhibit H, R. p. 21) This voucher amounted to $4886.62. As shown by the testimony of Mr. Rivere, the auditor, this voucher was paid in full with the knowledge and consent of both of the receivers. Appellees continued with the work and received vouchers, Exhibits B, C and D, (R. p. 14) from the same source and in the same man-

ner for work, which they continued to do under the same contract, all of which vouchers were duly registered by the auditor and entered upon the books as a debt of the company. This debt is recognized by the receivers in their letter of June 3d, 1891, addressed to appellees, (R. p. 59) in which they direct appellees to stop work on the Kali-inla Hotel and make out bill for work done up to and including that day, and that appellees would then be furnished with designs and directions as to work to be done, and requesting appellees to name a gross sum for the performance of the same. Subsequently, on June 19th, the receivers, by Mr. Chadick, admitted this indebtedness and promised to pay the same. The letter is as follows:

SOUTH MCALESTER, I. T., June 19, 1891.

Messrs. W. H. Cooper & Son, South McAlester; I. T.:

Gentlemen—Replying to your favor of the 17th inst., I desire to say that owing to the payment of interest on receivers' certificates this month and other back payments, we are unable to settle the amount due you on the two vouchers, amounting to $14,000.00. We expect, however, to be in shape early in July to pay all these matters and will certainly pay all if business continues at the present rate. There is no apprehension or indication of its letting up, and we are therefore confident that in all events, within the month named, we shall be able to settle with you, either in full or for the greater portion of said vouchers. If you desire it, we will accept for fifty per cent of the same, but will endeavor to do better than that if possible.

Very truly yours,

EDWIN D. CHADICK,

For Receivers.

(R. pp. 59 and 60.)

So we have here a case presented where appellees were permitted after appointment of receivers to proceed under a formal contract with work that was necessary to the preserva-

tion of the property. No new contract was formally entered into but the old contract was recognized by both parties as extending to the new work and vouchers were made, one of which had been paid under the terms of the old contract and the work performed and completed by appellees in reliance thereon, until at the termination of the work after having so recognized the old contract and received the full benefit of the faithful performance by appellees of their part thereof, appellants seek to evade their obligation thereunder by some dodge unknown to justice and fair dealing and, as we believe, unknown to the law.

Sunflower Oil Co. vs. Wilson, 142 U. S., 313.
Ellis vs. Boston & City Railway, 107 Mass., 1.
Easton vs. Houston R. Co., 38 Fed. 788.
Vanderbilt vs. Little, 43 N. J. Eq., 669.
Kerr vs. Little, 42 N. J. Eq. 528.
Beach on receivers, Sec. 363.

Cent Trust Co vs Ohio Cent R Co 23 F R 306
Howe vs Harding V. 76 Fed 17

On the matter involved in appellant's second assignment of error I submit that the evidence is conclusive against appellants on the proposition of having made a contract for the performance of work done after June 3d, 1891.

They wrote the letter of June 3rd stating to appellees that they would furnish designs and directions as to the work to be done and that appellees should name a gross sum for the performance of the same. Receiver Chadick directed the supervising architect for the receivers to prepare the designs and directions and submit them to the court which was done; they met the approval of the court except in minor details wherein they were changed; came back to the resident receiver; by him delivered to his supervising architect with directions to deliver them to Cooper and also by a letter directed to the appellees in which he says: "Gentle-

men—We have been advised by Maj. Wm. Nelson, Master, of the following order of the United States Court: 'You are hereby directed so finish up court room and all offices on lower floor of the hotel building; also such rooms on the second floor as may be necessary' in accordance with estimates to be hereinafter furnished.

EDWIN D. CHADICK, for Receivers.

(R. p. 60.) A. B. BOYD."

To all of which appellees replied:

E. D. Chadick, Esq., Receiver Choctaw Coal & Railway Company:

Dear Sir—We will furnish all material and complete according to plans and specifications that part of the west half of the hotel building to be used as United States court apartments for the sum of $7978.00; also the east part of said building to be used as railway offices and auditors and bank departments as per plans and specifications for the sum of $2272.00, or both for $10,250.00. The company has on hand material to the value of $2500.00 which it can furnish and deduct same from the above amount. (R p. 60.)

This proposition was accepted by receiver Chadick and the supervising architect, Cox, directed to draw up a contract in keeping therewith. This, he did, putting in the amount set forth in Cooper's letter under the direction of Receiver Chadick. The contract so written containing tracings and specifications was signed by appellees and by the supervising architect. Under it appellees proceeded at once to work and did the work in strict compliance with the plans and specifications so furnished and received a certificate to that effect from the supervising architect of the receivers. (R. pp. 15 and 16.) This certificate includes the contract price and the extra work done under the terms of the contract itself. Not only this but after the work had been completed by appellees, finding pay so slow, and hearing that the active management of the

receivership was about to be transferred from the home to a foreign receiver, he concluded to retain possession of the building until his accounts were settled but upon the promise of receiver Gowan that the matter would be taken up the following Monday he delivered possession of the building to the receivers, which they have since that time enjoyed. Now the building being completed, and turned over to the receivers; being in full possession and enjoyment thereof, having derived all of the benefits that they could have derived, even by the faithful performance on their part of this agreement, they now deny these contracts in toto and their liability in toto and have so succeeded in keeping these poor men out of any return from their labors for the term of five years.

Within the scope of his authority, the receiver has power to make contracts subject to the power of the court, to forbid extravagant and improvident contracts while executory or reform those fraudulently made.

Beach on Receivers, Sec. 257, 361.

Vilas vs. Paige, 106 N. Y., 439.

When within the scope of his powers he has made a contract in good faith and the other party relying on it, has performed his part, the receiver should be required to perform his undertaking, although it was improvident.

Wabash, etc. vs. Central, etc., 22 Fed., 269.

Kerr vs. Little, 42 N. J. Eq. 528.

Vanderbilt vs. Little, 43 N. J. Eq., 669.

When the receiver has entered into a contract by direction of the court or with its knowledge or approval, it is the duty of the court to see that the contract is enforced.

Farmers, etc. vs. Burlington, etc., 32 Fed., 805.

Where two receivers are appointed, one is bound by the acts of the other, and especially is this so when one is a resident managing receiver and the other is a non-resident member.

McNulte vs. Lockbridge, 141 U. S., 327.
Vanderbilt vs. Little, supra.
Kerr vs. Little, supra.

Receivers have no right divine to repudiate their own contracts merely because they become irksome about paying time. When the other person has contracted with the receiver and on the faith of the contract has performed his part and expended money, the courts all insist that the receivers shall pay. If the contract is entirely executory and the party contracting seeks specific performance against the receiver then the onerousness of the contract will be considered by the court but no receiver should be permitted to hold the results of an executed contract and ask a court of equity to help him to defraud the party who performed the work.

Sparkhawk vs. Yerkes, 142 U. S. 1, 13.
Trust Co. vs. Wabash, etc., 150 U. S 287.
White Arms Co. vs. Barlow et al, 63 N. Y. 62.
Woodruff vs. Erie R. Co., 93 N. Y. 609.
Re. Otis, 101 N. Y. 580.
Quincy, etc. vs. Humphrey, etc., 145 U. S. 82.
St. Joseph, etc. vs. Humphrey, etc, 145 U. S. 105.

Barton vs Barbour 104 U.S. 126
Wallace vs Loomis 97 U.S. 146
Fosdick vs Schall 99 U.S 235
Cowdrey vs Galveston etc R Co
1 Woods 334

Since the trial of this case the Choctaw Coal & Railway Company has passed out of the hands of receivers and all of its effects of every kind have been conveyed to the Choctaw,

Oklahoma & Gulf Railway Company, which is now in full possession. All outstanding receivres' cerctificates have been discharged and the receivers are now seeking to wind up the affairs of the receivership. It is therefore respectfully suggested that if this case is affirmed a money judgment should be directed to be entered upon the supersedeas bond.

Respectfully submitted,

ARTHUR G. MOSELEY,

Counsel for Appellees.